

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
 YAVAPAI COUNTY, ARIZONA  
 FOR THE COUNTY OF YAVAPAI

2011 DEC -6 AM 9:58

SANDRA K MARKHAM, CLERK

~~Jacqueline Harschman~~

STATE OF ARIZONA, )

Plaintiff, )

vs. )

Case No. V1300CR201080049

JAMES ARTHUR RAY, )

Defendant. )

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
 BEFORE THE HONORABLE WARREN R. DARROW  
 AGGRAVATION TRIAL DAY ONE

JUNE 28, 2011

Camp Verde, Arizona

ORIGINAL

REPORTED BY  
 MINA G. HUNT  
 AZ CR NO. 50619  
 CA CSR NO. 8335

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
2 FOR THE COUNTY OF YAVAPAI  
3  
4 STATE OF ARIZONA, )  
5 Plaintiff, )  
6 vs. ) Case No V1300CR201080049  
7 JAMES ARTHUR RAY, )  
8 Defendant )  
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1 Proceedings had before the Honorable  
2 WARREN R. DARROW, Judge, taken on Tuesday, June 28,  
3 2011, at Yavapai County Superior Court, Division  
4 Pro Tem B, 2840 North Commonwealth Drive,  
5 Camp Verde, Arizona, before Mina G. Hunt, Certified  
6 Reporter within and for the State of Arizona.  
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## PROCEEDINGS

(Proceedings continued outside presence of jury.)

THE COURT: The record will show the presence of Mr. Ray, represented by Mr. Kelly, Mr. Li, and Ms. Seifter. State is represented through Ms. Polk and Mr. Hughes. And this is the time for legal discussion regarding the aggravating circumstances hearing.

Just to put a couple things on the record. First confirm with the attorneys, Juror No. 2, that alternate, was excused for a hardship without objection. Confirming that.

Mr. Hughes?

MR. HUGHES: That's correct.

THE COURT: Mr. Kelly?

MR. KELLY: Correct.

THE COURT: Yeah. Then -- and so that's been done. And really the procedure now is the other alternates will return for the evidence. They'll remain alternates, though. But they will hear the evidence. And -- and -- so that -- that's going to be the procedure.

There -- I'll start off. And I -- I do want to ask whether there have been any problems

with the admonition. I want to ask that before we get started.

But we need to discuss the aggravating -- aggravating circumstance hearing instructions. But are there any other matters?

Mr. Kelly.

MR. KELLY: I'm sorry, Judge. Judge, I do have a preliminary matter in regards to the court order regarding the gag order and contacting the press.

I know, or I'm assuming, that Ms. Polk has not intentionally violated the order, but -- and I don't have a copy. But if I may provide this to her and then mark it as an exhibit.

On June 22nd, 2011, there was an article in the Prescott Courier and an article comment by Mr. Keith Evans. Mr. Evans is a deputy county attorney employed by Yavapai County. And he makes some significant derogatory comments towards the defense team. I would like to have that marked as an exhibit to these proceedings, the next in line.

And I believe, Judge, it's probably going to be up to your discretion as to what you'd like to do about it. Again, I -- I seriously doubt that Ms. Polk or Mr. Hughes knew that their deputy was

going to make a comment. But it accuses the defense team of dirty tricks. I believe that goes beyond the scope of what is permissible comment under the Arizona Rules of Professional Conduct.

If we can mark it, Judge.

MS. POLK: Your Honor, I would have no objection to marking it. The -- obviously neither Mr. Hughes nor I nor anybody on the prosecution team had any prior knowledge of this. And it -- it does have the name of somebody who -- there is someone in my office who works -- who has that same name. I -- it probably is the same person, but I wouldn't even know for sure. It's just a single name that is here.

But I would have no objection to marking it as an exhibit as Mr. Kelly proposes. And can we just make a record that this team knew nothing of this.

THE COURT: I have not seen that.

MR. KELLY: May I approach --

THE COURT: Well, that will be marked and made part of the record. Do you have an extra copy?

MR. KELLY: Judge, I do not. I don't have a copy machine at home.

THE COURT: The record will show that -- we

will -- we will provide a copy of it to Ms. Polk, a copy, I would imagine. But this is the article I'm handing to the clerk.

MR. KELLY: Judge, I don't want to belabor this issue, but I do believe what's necessary is to verify that the author of the comment is, in fact, employed by the Yavapai County Attorney's Office. The name is the same. And the comment leads one, the reader, to believe it's the Mr. Evans who's employed by Ms. Polk's office. But that's an assumption on my part.

So I would ask for an order to show cause, if necessary, to bring Mr. Evans before the Court to confirm that he was the author, or alternatively, representation by Ms. Polk that he's the author.

And the gag order that you had entered some months ago applied, of course, to the entire Yavapai County Sheriff's Office and the Yavapai County Attorney's Office. That is the problem. I know there are First Amendment concerns that -- and I believe and I'm summarizing that your court order was that we had to comply with the Code of Professional Responsibility.

And as you can see by the language

1 referencing the defense term as using dirty tricks,  
2 I believe that violates the Code of Professional  
3 Responsibility.

4 If they want to make reference to the  
5 fact that some of us are from L.A. or we were  
6 papering the prosecutors, maybe that's protected by  
7 the First Amendment. But those words "dirty  
8 tricks," I believe, imply some type of misconduct  
9 on our part.

10 Finally, I'd add, Judge, that when you  
11 look at the exhibit in its total, the -- my name  
12 and picture is on the front page. And this  
13 comment, then, is after the article written by  
14 Mr. Duncan.

15 I have spent my entire career in Yavapai  
16 County. I have never been accused of dirty tricks  
17 in the courtroom. And I take great offense at that  
18 comment. So it's more than just some pro forma  
19 objection. It's -- I -- I would submit, a  
20 significant issue as it relates to the  
21 professionalism of attorneys in our local  
22 community.

23 Thank you, Judge.

24 THE COURT: Yeah. The gag order would  
25 technically still be in effect. Its main purpose

10

1 was to preserve the jury panel before actual  
2 selection. But, again, it applies now. And there  
3 are these other aspects that Mr. Kelly is asserting  
4 at this time too.

5 So, Ms. Polk, by name, that's a name of a  
6 person associated with your office. And you  
7 need -- if that's not the case, if it's not someone  
8 in your office, you need to let me know and let  
9 Mr. Kelly know.

10 MS. POLK: Your Honor, we will. We'll find  
11 out if it is, in fact, one of my employees. And  
12 we'll let both court and counsel know.

13 THE COURT: Thank you.

14 MR. KELLY: Thank you, Judge.

15 THE COURT: Have you had a chance to look over  
16 the further instructions to the jury?

17 MS. POLK: We have, Your Honor.

18 THE COURT: The -- the first part, it's what's  
19 really suggested. I'm pretty sure this is the  
20 language I used in a -- in a case the end of last  
21 year, I think it was.

22 But there are some objections that the  
23 defense has raised to some of these. And I -- of  
24 course, if they go to the jury -- whatever goes to  
25 the jury isn't going to have the statutes in them.

1 Those are just for reference now. These are  
2 just -- this is just a draft.

3 I did sign the request for an extension  
4 of page limits. So the -- the defense pleading is  
5 accepted. And I've -- I've read that. My judicial  
6 assistant was out yesterday. And I -- I didn't see  
7 these pleadings until this morning. But I -- I  
8 have read them.

9 Two of the asserted aggravating  
10 circumstances have been withdrawn. So there's no  
11 need to address those. But -- but three remain.  
12 And I've read the argument and --

13 Well, Mr. Kelly, the defense has  
14 challenged them. I think that's the way to  
15 proceed.

16 MR. KELLY: I -- Judge, yeah. We're  
17 challenging on page 3 in the jury instructions  
18 No. 1 and No. 3. And I believe Ms. Seifter is  
19 going to object -- or excuse me -- address the  
20 objection.

21 THE COURT: Okay.

22 Ms. Seifter.

23 MS. SEIFTER: Thank you, Your Honor.

24 We incorporate our pleading, which you  
25 indicated you've read. I'll just elaborate briefly

12

1 on the two aggravating circumstances that do  
2 remain. Those are the pecuniary gain and the  
3 position of trust, which arises under the catch-all  
4 provision.

5 With respect to the pecuniary gain,  
6 this -- this is the (d)(6) aggravator, which  
7 asserts that Mr. Ray committed the offense as  
8 consideration for the receipt or in the expectation  
9 of the receipt of anything of pecuniary value. An  
10 argument is simply that the state's apparent  
11 position, as we understand it, is contrary to the  
12 case law.

13 The -- both the RAJI instruction on this  
14 issue and this quite voluminous case law makes  
15 clear that -- and this is a quote from several  
16 cases. The existing -- the existence of a  
17 pecuniary motive at some point during the event  
18 surrounding the crime is not enough to establish  
19 the aggravating circumstance.

20 And that's, essentially, what we  
21 understand the state -- we'd be happy to hear from  
22 them on this. But that's, essentially, what we  
23 understand their position to be.

24 It has to be the case for this aggravator  
25 that the desire for pecuniary gain was the direct

1 motive or cause for the killing. And I think,  
2 Your Honor, as we discussed in our pleading, that  
3 the cases on murders committed during robberies are  
4 illustrative of how stringent this aggravator is.

5 Courts have expressly held that it is not  
6 enough that the killing occurred during a  
7 robbery -- a robbery, and, therefore, that the  
8 defendant obviously had a pecuniary motive in the  
9 background, as all robbers do.

10 It has to be as in the classic case of  
11 the defendant shooting the clerk to get to the cash  
12 register that the pecuniary gain was, in fact, the  
13 impetus and the motive and cause of the death, of  
14 the killing.

15 Our argument is that there is no  
16 parallels here. The aggravator simply doesn't  
17 apply to a case where someone -- you know -- an  
18 unfortunate accidental death occurred during the  
19 course of a business enterprise with which Mr. Ray  
20 was affiliated. We simply don't see how this  
21 aggravator could apply on -- on what are the  
22 undisputed facts of the case.

23 I can address the second issue as well.  
24 I don't know if the Court wants to hear from the  
25 state.

1 THE COURT: We can take one at a time.

2 Ms. Polk or Mr. Hughes.

3 MS. POLK: Your Honor, this aggravator is  
4 directly applicable in this case. Mr. Ray's  
5 conduct, the whole impetus, the motive for his  
6 conduct, was pecuniary gain. Mr. Ray created this  
7 extreme event with this culminating event being the  
8 sweat lodge so that his participants would perceive  
9 that they were getting something for their money.

10 His whole impetus, his motive, in  
11 conducting that sweat lodge, that heat challenge,  
12 was for pecuniary gain. This is a clear case of  
13 conduct committed specifically for money. This is  
14 not an event where somebody just accidentally dies.  
15 The whole purpose of Mr. Ray's event was to create  
16 breakthroughs, to create altered states. And his  
17 very conduct causes the death. And his very  
18 conduct was specifically for pecuniary gain.

19 He charged \$10,000 per person for the  
20 week. And in exchange for that \$10,000, he needed  
21 to produce, create, or otherwise cause these  
22 breakthroughs or these altered states. And it's  
23 his conduct in trying to create those  
24 breakthroughs, those altered states, that causes  
25 the deaths.

1 And that's specifically what this  
2 aggravator is about. Is his conduct aggravated  
3 because he is doing it for pecuniary gain? And  
4 there's no question, based on the evidence in this  
5 case already introduced to the jury, that Mr. Ray  
6 is engaging in this conduct for pecuniary gain.

7 THE COURT: Thank you.

8 Ms. Seifter.

9 MS. SEIFTER: Just a couple more words on  
10 that, Your Honor.

11 One issue is there -- there is no case  
12 law that supports that type of argument. There's  
13 no case involving, frankly, a negligent homicide at  
14 all, but certainly not where a death occurs in the  
15 context of something that is a business and somehow  
16 that that nexus is sufficient for this aggravator,  
17 which does demand a very tight nexus.

18 The -- you know -- case law specifically  
19 says it has to be direct evidence or very strong  
20 circumstantial evidence that the motive for  
21 pecuniary gain was the impetus for the crime.

22 And I think -- I mean, in -- in response  
23 to Ms. Polk's argument, there are two issues. One  
24 is the analysis has to hue to the actus reus. So  
25 to the extent that the state's position is that

1 failing to check on people at a particular time is  
2 what constituted the crime, it has to be the case  
3 that that was done for pecuniary gain. And it --  
4 it wasn't. I mean, I -- I don't think the state  
5 would argue that. And it's certainly not true.

6 And the other issue is simply that that  
7 argument is, basically, the argument that was  
8 rejected in a number of robbery cases, that the  
9 reason the person was committing the robbery was  
10 because they wanted the money and somebody died in  
11 the course of it. And that is not sufficient. It  
12 has to be much tighter, like the case of the person  
13 shooting the clerk to get to the cash register.

14 MS. POLK: And, Your Honor, this is not a case  
15 where somebody happens to die in the course of an  
16 event. The event that Mr. Ray produced for money  
17 was this heat-endurance challenge. And as a direct  
18 result of his conduct people died.

19 It is not an applicable comparison to  
20 look at first-degree murder cases where you have to  
21 intend to commit the murder. You need to look at  
22 it in the context of the elements of the crime that  
23 Mr. Ray has been convicted of, which is negligent  
24 homicide, which is simply that he engages in  
25 conduct and fails to perceive a result.

1 But it's important to look at his intent  
2 in engaging in the conduct. And specifically his  
3 intent was to create this extreme experience. And  
4 that extreme experience is exactly what he was  
5 selling to his participants. And his expectation  
6 in exchange for this extreme event that he's  
7 putting on is pecuniary gain. It is integral to  
8 his conduct. It is part and parcel of his conduct  
9 that he is putting on this extreme event and causes  
10 the death.

11 There is no other case out there. I  
12 would agree with that, Your Honor. And as this  
13 Court has noted throughout this trial, this is a  
14 unique set of circumstances.

15 But the determination whether or not this  
16 is committed for pecuniary gain should rightly lie  
17 with the jury. To preclude the jury from even  
18 considering that in advance would be to invade the  
19 province of the jury.

20 If there is this inference -- and I would  
21 point the Court to the State versus Armstrong case.  
22 If the jury can reasonably infer from the evidence  
23 that Mr. Ray's motive, that his impetus, for  
24 committing the conduct was pecuniary gain, then  
25 that aggravator should go to the jury. It should

1 not be precluded ahead of time from the jury's  
2 consideration.

3 And I would ask that the Court allow that  
4 aggravator to continue and let the jury be the one  
5 to decide whether or not they believe that  
6 Mr. Ray -- that his impetus, that his motive, for  
7 creating this extreme event was pecuniary gain.

8 THE COURT: Ms. Seifter.

9 MS. SEIFTER: Thank you, Your Honor.

10 Just two final points. One is this would  
11 be the first negligent homicide case in which this  
12 aggravator is applied. So it seems the parties  
13 agree on that. But, of course, it's not the first  
14 negligent homicide case in Yavapai County and not  
15 the first negligent homicide case that arose during  
16 the course of a for-profit business. So I would  
17 note that.

18 And the other issue is, in terms of  
19 invading the province of the jury, it is a legal  
20 question for the Court to determine whether it's  
21 appropriate to allow the aggravator to be charged  
22 in the Blakely hearing. And -- and it -- and it is  
23 fundamental error for a jury to rely on an  
24 erroneous aggravator. And so the Court can make  
25 this and must make this determination before the

1 hearing begins.

2 MS. POLK: Your Honor, I would just -- I would  
3 like to respond just to the suggestion that there  
4 is no similar case. As the Court and counsel know,  
5 not every case results in published opinions. And  
6 I would agree that there are no published opinions.  
7 But to suggest that there are -- there's no other  
8 negligent homicide case out there where pecuniary  
9 gain was an aggravator probably is going too far.

10 THE COURT: Okay. Well --

11 MS. SEIFTER: But there is no authority for  
12 it. And -- and if the state is aware of any  
13 authority, we would like to see it.

14 THE COURT: I attempted to find some law  
15 myself, and I didn't find any that's directly  
16 applicable. You look at the type of cases that  
17 deal with pecuniary gain. It's just -- it's the  
18 focus. It's not just this one-step removed.

19 Arguably by this -- apparently the  
20 state's argument, this is a marketing concept that  
21 will result in pecuniary gain. I don't think any  
22 of the cases that I've seen make that connection.

23 Procedural issue at this point. Does the  
24 Court then step in and, essentially, find that  
25 there's been a defective pleading, that there just

1 cannot be evidence, as a matter of law it shouldn't  
2 go to the jury?

3 One consideration, Ms. Polk, is if I do  
4 present to the -- to the jury, even if I later  
5 decide at another time, well, this really is a  
6 Rule 20 type of decision now, what does it mean for  
7 the aggravating circumstance proceeding to have  
8 something to go to the jury that should not have  
9 gone to the jury? Even it is removed, does that do  
10 something to the other -- other factors that may be  
11 appropriate?

12 I think at this procedural stage I'm  
13 going to allow the jury to consider it. I'm -- I'm  
14 concerned the instruction does -- does not really  
15 tell them much. And, of course, when you get into  
16 this law, you find yourself in capital case law.  
17 That's -- in many respects. Of course, pecuniary  
18 gain can come up in other -- other cases as well.

19 But I -- I looked at one of the cases,  
20 State versus Anderson, 210 Ariz. 327, a 2005  
21 decision. And the instructions that were -- passed  
22 muster there regarding a pecuniary gain. And  
23 there's -- there's quite a bit of definition in --  
24 in -- that would assist the jury in what that  
25 means.

1 Ms. Polk, do you have any language or is  
2 it your position that just the statement of the 701  
3 language is all that's really necessary?

4 MS. POLK: Your Honor, the -- the state  
5 believes the existing jury instructions are  
6 sufficient. We don't need additional language.

7 THE COURT: Well, I'm going to ask the  
8 defense. Again, I understand the legal argument  
9 and proceeding now --

10 MR. KELLY: Judge, obviously it has to be  
11 defined or it can be misconstrued. And I believe  
12 Ms. Seifter's ready to address that issue, Your  
13 Honor.

14 THE COURT: Okay.

15 MS. SEIFTER: There -- there is a RAJI  
16 instruction on this. It does come from the capital  
17 case context, but the definition is the same.  
18 And -- you know -- we could discuss the precise  
19 wording, but definitely something along those lines  
20 which defines the term. It explains the  
21 boundaries.

22 Specifically, it claims that the  
23 existence of pecuniary motive at some point during  
24 the event surrounding the crime is not enough to  
25 establish the circumstance. We believe it must be

1 given.

2 MS. POLK: Your Honor, if I can ask that  
3 counsel give us reference to the RAJI.

4 THE COURT: And that's really what's discussed  
5 in the Anderson case, that -- that type of language  
6 necessary in that context. I do think there needs  
7 to be additional instruction along those lines.

8 So I'll ask that something be prepared.

9 You've made your objection to having it  
10 go at all. So that's on the record.

11 Ms. Polk, it seems to me that case law  
12 requires some additional instruction if it's going  
13 to the jury.

14 MS. POLK: And that's fine, Your Honor.  
15 We'll -- do you want to settle it will now or do  
16 you want --

17 THE COURT: I'd like you to get something to  
18 me. And perhaps you might agree on the language  
19 realizing the defense has an objection to the  
20 factor going to the jury at all.

21 Then the -- the other contested  
22 circumstance, Ms. Seifter, having to do with unique  
23 position of trust.

24 MS. SEIFTER: Your Honor, we're in a similar  
25 position with this aggravator in the sense that the

1 assertion of the aggravator in this case diverges  
2 far from the authority. This is a bit of a unique  
3 circumstance because it does arise under the  
4 catch-all aggravator. So in a sense there is no  
5 authority for it.

6 But there's certainly no precedent for  
7 what the state appears to allege, which is that  
8 merely occupying an undefined position of trust  
9 could give rise to aggravation of a sentence or  
10 that a defendant could abuse a position of trust  
11 unintentionally as a matter for aggravation.

12 There, of course, is case law in other  
13 jurisdictions which have the abuse of a position of  
14 trust as an enumerated aggravating factor. And  
15 that includes a few states and the federal  
16 sentencing guidelines.

17 And in the jurisdictions that use that  
18 aggravator, there's a stringent test with two  
19 elements that must be proven. And those are that  
20 the defendant has to occupy a cognizable  
21 relationship of trust, vis-a-vis the victim, which  
22 usually is a parent or fiduciary.

23 And, second, that the defendant has to  
24 abuse the trust as a means of facilitating the  
25 commission or concealment of the crime. So, again,

1 this involves intentional crimes in which abuse of  
2 trust is -- is a way that the defendant is able to  
3 either commit a crime or, essentially, get away  
4 with it.

5 The very classic case is the embezzlement  
6 of funds by a fiduciary. And there's a case from  
7 the Fourth Circuit Court of Appeals, United States  
8 versus Ebersole, 411 F.3d 517. And that just  
9 discusses -- of course, we're not arguing that the  
10 federal sentencing guidelines apply, but just sort  
11 of as a matter of guidance.

12 The Court states that application of the  
13 enhancement requires more than a mere showing that  
14 the victim has confidence in the defendant.  
15 Something more akin to a fiduciary function is  
16 required.

17 So the -- the problem here, Your Honor,  
18 is simply that the state's allegation appears  
19 unbounded by these types of elements. It's not an  
20 intentional crime. Mr. Ray did not occupy the  
21 relationship of a parent or a fiduciary.

22 And this also creates a second level  
23 problem, which is how does this get proven by any  
24 competent evidence? How do you instruct the jury  
25 on what it means to occupy a position of trust and

1 abuse it? And what witness testimony would be the  
2 basis for that in a nonhearsay fashion that would  
3 not violate Mr. Ray's confrontation rights? So we  
4 believe the aggravator should be stricken at this  
5 time.

6 There's also argument discussed in our  
7 pleading, which I won't reiterate here about the  
8 limitations of the catch-all provision, for the  
9 Court's use.

10 THE COURT: Seeing that due-process case  
11 in 2009, it doesn't provide someone notice, the  
12 catch-all, that would enable the state to have an  
13 enhanced sentence. That -- that doesn't say it  
14 couldn't go to the jury. It doesn't bar that.  
15 It's just that that could never be the basis alone  
16 to enhance a sentence.

17 Ms. Polk.

18 MS. POLK: Your Honor, the -- the defense  
19 seeks to put restrictions on the catch-all category  
20 that simply do not exist. And referencing the  
21 federal guidelines and the fiduciary relationships  
22 that exist and trying to apply them to the other  
23 categories, there's simply no legal authority for  
24 that.

25 And, in fact, under 13-701(14) --

1 (d)(14), that a defendant was in a fiduciary  
2 position and abused his duties in that regard  
3 already is an existing aggravator. So that -- that  
4 fiduciary argument that was just made is already an  
5 aggravating factor. And to try to restrict or  
6 limit the catchall with cases that apply to the  
7 fiduciary relationship simply is untenable.

8 Clearly under Arizona law the state can  
9 allege aggravating factors under the catchall. And  
10 that's what we've done here. In this case we do  
11 not intend to present any additional witnesses with  
12 respect to this aggravator. We're going to rest on  
13 the trial testimony of many witnesses, as well as  
14 the audio clips pertaining to two of the three  
15 victims that the jury has already heard.

16 And based on the evidence that they've  
17 already heard, based on that ample testimony, the  
18 jury can conclude that it's an aggravating factor  
19 that Mr. Ray was in a unique position of trust.

20 As Court and counsel know, what the jury  
21 has already heard is that many people set aside  
22 their instincts, their common sense, those -- their  
23 known boundaries, set that aside to follow Mr. Ray  
24 into that sweat lodge and, thus, the results that  
25 occurred.

1 But there is no legal authority to  
2 suggest that the jury cannot hear a catch-all  
3 provision. In fact, under 13-701(c), I believe  
4 that the state having alleged it, this clearly says  
5 that the trier of fact may consider it. And we  
6 have properly noticed it. There has been proper  
7 notice to the defense. And I believe that that  
8 aggravator should go to the jury as well.

9 THE COURT: Thank you.

10 Ms. Seifter.

11 MS. SEIFTER: Your Honor, it's simply an  
12 unmanageable, from our point of view, aggravator to  
13 present to the jury. The jury will be left to  
14 look -- I mean, assuming no definition is given,  
15 the jury will be left to just look at this and,  
16 basically, ask themselves did these people trust  
17 Mr. Ray? And that would not be a legitimate basis  
18 for aggravating sentence, just some general  
19 subjective feeling of trust, setting aside the  
20 problems of proof that we perceive in -- in  
21 supporting that allegation.

22 So that -- that was why, Your Honor, we  
23 looked to the case law that does exist on this  
24 aggravator to try to find some way to bound it and  
25 define it. But without any definition, we just --

1 we're very concerned about prejudice to our client  
2 and the possibility of an erroneous verdict based  
3 on emotion and very, very vague notions that --  
4 that would violate due process in the same way that  
5 the Schmidt and Perrin cases discuss, not having  
6 any notice of what the aggravator is. That's our  
7 concern.

8 THE COURT: This brings to mind the issue of  
9 regarding duty, and the Court gets involved in  
10 things and what the province of the jury is and how  
11 you can't interfere with that.

12 Ms. Polk, just unique position. What --  
13 what would a jury do with that? Normally when you  
14 instruct a jury, they're given bounds and they're  
15 given some -- some guidance with regard to the law.  
16 And just to say it's unique, unique compared to  
17 what? It's the management aspect.

18 I mean, without any further definition --  
19 as a matter of pleading it's been out there and  
20 it's been alleged for some time. So this is the  
21 first that it's been raised as a vagueness  
22 argument, I suppose. But I see a real practical  
23 problem in just presenting that unique position.

24 MS. POLK: And, Your Honor, the state would  
25 agree to strike the word "unique" and just simply



1 leave that Mr. Ray was in a position of trust.  
 2 Again, this is a fact-specific inquiry. And as  
 3 I've just argued to the Court, this jury has had --  
 4 heard ample evidence of the position of trust that  
 5 Mr. Ray was in and ample testimony from witnesses  
 6 that they acted as they did because they trusted  
 7 Mr. Ray.

8 In -- in a general sense, arguments about  
 9 vagueness might work, but in a -- when you do a  
 10 fact-specific inquiry, you look at the facts of  
 11 this case, there is no question that Mr. Ray was in  
 12 a position of trust.

13 We have properly noticed it as an  
 14 aggravator. The jury has heard ample testimony,  
 15 and they have sufficient facts already in front of  
 16 them upon which they can find beyond a reasonable  
 17 doubt that Mr. Ray was in a position of trust.

18 THE COURT: Ms. Seifter.

19 MS. SEIFTER: Your Honor, we incorporate our  
 20 pleadings on this. The concern is vagueness and  
 21 due process and just a -- a fundamental question  
 22 about what the evidence is that proves this with  
 23 respect to each victim, what the nonhearsay  
 24 competent evidence is and what the jury will --  
 25 will make of this undefined term. These do not --

1 I mean, there's just no authority for this, and --  
 2 and we're concerned about the prejudice to Mr. Ray.

3 THE COURT: Ms. Polk has indicated there's not  
 4 going to be additional evidence on this. The --  
 5 the legal problem -- the legal concerns will  
 6 remain, but without unique, which adds -- well, I  
 7 don't know what it adds. But just going in as a  
 8 position of trust alleged. There has been notice  
 9 of that.

10 Ms. Seifter.

11 MS. SEIFTER: I'm not sure that removing the  
 12 word "unique" helps.

13 THE COURT: I don't know that it does either.

14 MS. SEIFTER: I think it just --

15 THE COURT: I really don't. I don't mean to  
 16 interrupt. I don't know that it does. I know that  
 17 it's been alleged for over a year, and now there's  
 18 been this. Would you rather have "unique" in? I'm  
 19 going to provide it if you do.

20 Ms. Polk, I assume either -- either  
 21 phrasing is acceptable to the state?

22 MS. POLK: Yes, Your Honor.

23 THE COURT: So if -- if I'm giving this, then,  
 24 Ms. Seifter, would you rather have "unique" in?

25 MS. SEIFTER: We -- we would like "unique" in

1 then, Your Honor. We would also like it to stay  
 2 consistent with the only authority that exists in  
 3 this area that -- that the defendant abused a  
 4 unique position of trust, not simply was in it.

5 THE COURT: I think that's the argument the  
 6 state has made, essentially, their position.

7 But what about that, Ms. Polk?

8 MS. POLK: May I have a moment, Your Honor?

9 THE COURT: Yes. Of course.

10 MS. POLK: The state would agree to that, Your  
 11 Honor.

12 THE COURT: So, Ms. Seifter, the defendant  
 13 abused a unique position of trust?

14 MS. SEIFTER: May we have a moment, Your  
 15 Honor?

16 THE COURT: Of course. I -- I asked the jury  
 17 not to come in until 10:30 because -- because I  
 18 thought there'd be legal discussions. So I don't  
 19 wanted to rush this.

20 MR. KELLY: Judge, I -- I just have to make a  
 21 comment in regards to the rules of evidence. If  
 22 this aggravator is going to be now proven by  
 23 evidence presented during the guilt phase of this  
 24 jury trial, I remind the Court that much of the  
 25 hearsay evidence was allowed by this Court for a

1 separate purpose. And that was -- and I heard  
 2 repeatedly that where -- in response to one of my  
 3 hearsay objections, it was not being offered for  
 4 the truth of the matter asserted.

5 And now, apparently listening to  
 6 Ms. Polk's argument, now they want to take those  
 7 same hearsay statements and use to prove beyond a  
 8 reasonable doubt an abuse of a unique position of  
 9 trust. And -- and that's an entirely different  
 10 legal issue, Judge. I -- I -- I don't think it's  
 11 proper.

12 And I'll make a comment, Judge. And I  
 13 appreciate the time to speak. But I have tried  
 14 many capital cases. And prior to the aggravation  
 15 phase I have had courts in this county intervene  
 16 and strike aggravators. So -- so I believe it is  
 17 within your discretion to do that.

18 It's not that we simply just throw  
 19 everything up against the wall and let a jury  
 20 decide and there's no theory that ultimately you'll  
 21 assign weight to these aggravators, which I know  
 22 you have the discretion to do. But -- but it is  
 23 more prejudicial than that. There's a  
 24 confrontation clause issue.

25 And as I sit here and think, now if --

1 and -- and I don't know specifically what the state  
2 intends to use to prove this aggravator based on  
3 trial testimony. I heard clips, but I just know we  
4 went through a lot of discussion and argument about  
5 the proper purpose of the use of those clips during  
6 the guilt phase.

7 And I would submit that if now they're  
8 being offered for the truth, then we'd move for a  
9 mistrial on the verdict because they're being used  
10 for a different purpose.

11 THE COURT: Ms. Polk.

12 MS. POLK: Your Honor, I think that the use of  
13 the two audio clips does bear discussion. Those  
14 two audio clips would, of course, be the audio clip  
15 of -- of Kirby Brown, her last recorded statements,  
16 and then James Shore's last recorded statement.

17 As I recall at trial, they were admitted  
18 with a limiting instruction read, that they were  
19 admitted for the purpose of showing the state of  
20 mind of each of those two victims as well as the  
21 effect on Mr. Ray, what his level of knowledge was  
22 about their state of mind.

23 So I do think this bears further legal  
24 discussion about what proper arguments -- or  
25 perhaps we move during this phase to have them

1 included for an additional purpose.

2 The two audio clips aside, the rest of  
3 the circumstantial evidence that the state will  
4 rely on to prove this position of trust is all the  
5 testimony that was admitted without limitation.  
6 And that's where witness after witness testified  
7 about how they trusted Mr. Ray, they believed that  
8 they would be safe, that they set aside their own  
9 common sense because they believed that Mr. Ray  
10 knew better than they did what they were capable  
11 of.

12 All of that was introduced and admitted  
13 without limitation and the circumstantial evidence  
14 of the position of trust that the victims  
15 themselves -- that Mr. Ray would have had with  
16 respect to the victims themselves.

17 The -- I do think we -- that the -- as I  
18 said, the two audio clips -- I don't know if we can  
19 find the limiting instructions that were given at  
20 the time. I believe it would be helpful if I could  
21 see the -- the limiting instruction. We can  
22 probably put our hands on it.

23 THE COURT: And I -- I would give limiting  
24 instructions again.

25 MR. KELLY: Judge --

1 THE COURT: I would do that.

2 MR. KELLY: If it's being offered for the  
3 truth, then a limiting instruction -- then it's a  
4 violation of the rules of evidence. It can't be  
5 cured. The limiting instruction is to make sure  
6 that the evidence is not misused.

7 THE COURT: Then perhaps there should be an  
8 instruction for purposes of this that those clips  
9 should not be considered at all -- must not be  
10 considered at all.

11 MR. KELLY: Then they shouldn't be played.

12 THE COURT: I don't think -- they're not going  
13 to be played.

14 MR. KELLY: Oh. I -- I --

15 THE COURT: Ms. Polk has indicated she's not  
16 going to present any additional evidence on this  
17 point.

18 MR. KELLY: I misunderstood, Judge. I thought  
19 she was going to play the clips during the  
20 aggravation phase.

21 THE COURT: No.

22 MR. KELLY: But then obviously argument as it  
23 relates to those clips would be precluded.

24 THE COURT: And your point -- I understand  
25 your point with regard to argument. And I think

1 that -- that would be the clearest way to do it, to  
2 not have the clips. Because that -- the content --  
3 that's what the instruction tried to make sure,  
4 that what was being recited, the hearsay aspect,  
5 couldn't be considered.

6 Ms. Polk.

7 MS. POLK: And, again, those audio clips are  
8 not being offered for the truth of the matter  
9 asserted in the clips. Hearsay is when you are  
10 offering it to prove the truth of whatever that --  
11 the speaker is saying.

12 And with respect to both Kirby Brown and  
13 James Shore, we are still not offering it for the  
14 truth of what either is saying. So it is  
15 nonhearsay. And it's being offered, again, as it  
16 was offered at trial, for proof of their state of  
17 mind, their position, their state of mind, their  
18 belief in Mr. Ray.

19 And it's being offered for Mr. Ray's  
20 state of mind just as we offered it at trial,  
21 his -- his knowledge, then, that these two  
22 victims -- that this is their state of mind as they  
23 entered his event.

24 So I'm kind of thinking this through out  
25 loud and talking as I think. But it seems to me

1 that they are admissible for the same purpose that  
2 they were admitted -- admitted at trial, that they  
3 are still not hearsay.

4 We're not trying to prove that Mr. Shore,  
5 for example -- I believe his statement starts out,  
6 I am Samurai James. We're -- we're not trying to  
7 prove the truth of what the speakers were saying.

8 We, again, are offering them -- or asking  
9 the jury to consider it for the state of mind of --  
10 of the two victims, as well as Mr. Ray's knowledge  
11 of their state of mind.

12 THE COURT: Well, I -- I would -- they're not  
13 going to be played again. So I would accept a  
14 limiting instruction. If there's some that can be  
15 fashioned, I would do that. I'm going to put this  
16 in the revised form.

17 Mr. Kelly, if you have a limiting  
18 instruction. But they're not going to be played  
19 again in any event.

20 Then the last item in there -- in the  
21 defense -- there's not an overall argument, but  
22 I -- I have a question about the disjunctive nature  
23 of that circumstance. And I believe the last time  
24 I did break it out, there was only a certain aspect  
25 of the three categories that went. So that --

1 that -- it's physical, emotional, or financial  
2 harm. It's all of that.

3 Does the state -- what does the state  
4 intend to present.

5 MS. POLK: Your Honor, just emotional and  
6 financial harm. I believe we can strike physical.

7 THE COURT: Then in -- in that case, shouldn't  
8 that actually be broken out separately?

9 Ms. Seifter, Mr. Kelly.

10 MR. KELLY: Judge, I -- I think it's fine the  
11 way it's drafted --

12 THE COURT: Okay.

13 MR. KELLY: -- as -- as one aggravator. I  
14 don't believe that there's a significant dispute --  
15 well, I know there's not a dispute that the  
16 victims' immediate family suffered emotional harm.  
17 I suppose there may be, as odd as it sounds, a  
18 legal inquiry as to financial harm since James Ray  
19 International has paid monies through civil  
20 settlements. But I think it's fine the way it is.

21 THE COURT: There's no question about  
22 unanimous verdict or something by having it  
23 disjunctive? There's no concern from the defense  
24 in that regard?

25 MS. SEIFTER: It's only -- as long as it's

1 understood that it's simply one aggravator.

2 THE COURT: Okay.

3 MR. KELLY: That's -- yeah. That's our  
4 concern in breaking it apart. It appears to be two  
5 aggravators and it should be one.

6 THE COURT: It -- it clearly can only be one  
7 aggravator. This -- this procedural question and  
8 if there's any unanimous verdict question. And  
9 yes. It's only one aggravator even if it were  
10 broken out in some fashion.

11 MR. KELLY: Thank you.

12 THE COURT: Ms. Polk, then, the physical harm  
13 will just be removed. And it'll be presented in  
14 that fashion.

15 MS. POLK: Your Honor, the state does have  
16 another issue --

17 THE COURT: Okay.

18 MS. POLK: -- which is this issue of  
19 settlement with the families. The -- all three of  
20 these families have filed a law -- or had filed a  
21 claim against Mr. Ray. It has been settled. The  
22 terms remain confidential, and the -- if -- if I  
23 don't bring it out, then -- if I don't draw the  
24 sting, so to speak, when I question them and the  
25 defense does, then it looks like we were going to

1 hide something. So I would like in advance a Court  
2 ruling whether or not I can establish that there  
3 has been a settlement without going into the  
4 amounts.

5 The -- Alyssa Gillespie, who's the wife  
6 of James Shore, for example, will testify as to the  
7 financial harm, that that settlement is enough only  
8 to cover her for four years, and two years are  
9 already gone. So her long-term financial harm,  
10 because James Shore was the primary bread winner,  
11 is substantial.

12 And the state would intend to discuss the  
13 settlement simply in that regard that, yes, there  
14 was a settlement with respect to Alyssa, it's not  
15 adequate, and that she still will suffer financial  
16 harm.

17 The other two will also acknowledge that  
18 there was a settlement. But, again, I don't know  
19 the amounts. The amounts remain confidential. The  
20 state does not know the amount.

21 And then also the reason why the families  
22 accepted the amount that they did, I think, is also  
23 relevant.

24 THE COURT: Mr. Kelly.

25 MR. KELLY: Judge, we -- we didn't anticipate

1 this either as an issue. We know the dollar amount  
2 that Alyssa received. And if the testimony in this  
3 trial is -- and I don't want to mischaracterize  
4 what Ms. Polk said. But I -- I believe she said  
5 that it was only enough to support her for another  
6 four years?

7 MS. POLK: I believe her testimony will be  
8 that if she continues at the same lifestyle they  
9 had prior to Mr. Shore's death, when they got it,  
10 it was enough to cover four years.

11 MR. KELLY: So four more years. Then suddenly  
12 the dollar amount becomes relevant. We had not  
13 intended on bringing in any dollar amounts. But  
14 then I believe just out of fairness the jury ought  
15 to know what that dollar amount is because it is a  
16 significant amount of money.

17 It's not \$20,000, where she has \$5,000 a  
18 year for the next four years to survive on.

19 It's -- it's quite a bit of money. I won't mention  
20 it until you make a ruling. But if the average  
21 income of an American in the United States is  
22 around \$38,000 a year, it's significantly more than  
23 that.

24 And so I don't want this jury to believe  
25 that the aggravator is established by misapplying a

1 dollar amount when they're back deliberating based  
2 on average incomes in the United States. And we  
3 can approach sidebar. I -- I can tell you what I  
4 understand the figure to be.

5 But -- anyway, I -- we didn't anticipate  
6 this. We were not going to ask questions. But if  
7 it's -- you know -- obviously all we're talking  
8 about is what is relevant and appropriate and fair  
9 sentence for Mr. Ray. And in that regard, we do  
10 have concerns, Judge. It was a lot of money.

11 MS. POLK: And, Your Honor, the state would be  
12 fine with not having the victims discuss that there  
13 has been a settlement. The problem is if -- if we  
14 don't bring it out and then cross-examination says  
15 there was a settlement, wasn't there, then we  
16 haven't been able to draw the sting.

17 But if counsel is saying that they --  
18 that the jury will never know there was any sort of  
19 settlement, then the state would be fine with that  
20 as well.

21 MR. KELLY: The problem is if -- if there's  
22 testimony that I only have enough money to survive  
23 four more years without my husband, that's the  
24 problem. Because it is a lot of money, Judge.  
25 If -- if there's no testimony at all, we wouldn't

1 bring it up and open that door, but --

2 MR. LI: Your Honor, can I have a moment?

3 THE COURT: Yes. Of course.

4 MR. KELLY: Judge, what we'd be willing to  
5 stipulate to is that during direct examination --  
6 and we would not ask any questions on cross --  
7 that, in fact, there was a settlement, a financial  
8 settlement.

9 We are not willing, without raising the  
10 dollar amount of the settlement, to allow, then,  
11 testimony to go further that says that will only  
12 support me for another three, four, five years. If  
13 that happens, Judge -- and Mr. Li was involved in  
14 the settlement. And there is no -- pursuant to the  
15 terms of the settlement agreement, there's no  
16 prohibition of mentioning the dollar amount in a  
17 legal proceeding. We're only doing that just out  
18 of decency right now.

19 But there's nothing in the settlement  
20 agreement itself which would prohibit us from  
21 telling you right now what it is or asking the  
22 question. But we'd be willing to stipulate that --  
23 you know -- she had financial loss and there was a  
24 settlement.

25 THE COURT: Do you need to discuss that,

1 Ms. Polk?

2 MS. POLK: Your Honor, it's just that the  
3 state believes that for Alyssa Gillespie to discuss  
4 the financial harm, she would need to be able to  
5 say that the amount of the settlement is only -- it  
6 only covers her for four years if she continues at  
7 the same lifestyle that she and James Shore enjoyed  
8 before his death.

9 To just simply say there's a settlement  
10 leaves the jury not knowing, well, is there  
11 financial harm or not? So, again, the state is  
12 operating with little information. We've never  
13 been privy to the settlement amounts.

14 MR. LI: Your Honor, if I may have a moment  
15 with Ms. Polk, maybe we can clear some of this up.

16 THE COURT: Sure.

17 MS. POLK: Your Honor, can we take a brief  
18 break?

19 THE COURT: Yes.

20 MS. POLK: Thank you.

21 (Recess.)

22 THE COURT: The record will show the presence  
23 of Mr. Ray, represented by Mr. Kelly, Mr. Li,  
24 Ms. Seifter. The state is represented by Ms. Polk  
25 and Mr. Hughes.

1 Before we complete the discussion on the  
2 instructions, just to note something on the  
3 exhibits. The clerk wanted to have all exhibits  
4 resubmitted with new numbering. I didn't think the  
5 parties would want to do that. So the exhibits  
6 will retain the numbers they had during the trial.  
7 And I'm ordering that. And also the additional  
8 exhibits will just be numbered sequentially rather  
9 than go back and risking confusion with higher  
10 numbers.

11 Any issue with that, Ms. Polk?

12 MS. POLK: No, Your Honor.

13 MR. KELLY: No.

14 THE COURT: Okay. So that's ordered. I just  
15 heard Ms. Rybar indicate that maybe there's at  
16 least one agreed change.

17 But I want to go through that, Ms. Polk,  
18 and tell me your observations, any objections you  
19 have to this last set of instructions that I've  
20 drafted.

21 MS. POLK: Your Honor, page 3, the last  
22 paragraph. This is the definition of "pecuniary  
23 gain." The state requests that the RAJI be  
24 followed. It -- it looks like the defense had  
25 inserted a sentence and that the Court, at least at

1 this point it is in the instruction. If you look  
2 at the third -- the last paragraph.

3 THE COURT: Okay.

4 MS. POLK: That third sentence is not in the  
5 RAJI. It -- it reads similarly, the general profit  
6 motive associated with a business or corporation is  
7 not sufficient. That is what was proposed by the  
8 defense. And the state would request that that not  
9 be part of this instruction.

10 THE COURT: Ms. Seifter.

11 MS. SEIFTER: Your Honor, we did add that  
12 sentence. It is an accurate statement of the law.  
13 And the reason it's not in the RAJI, as the Court  
14 knows, we took this from the capital context. It's  
15 design for a first-degree murder instruction.

16 And the language that both parties agreed  
17 not to include that is sort of the equivalent of  
18 this sentence, which just gives the jury a bit of  
19 context about what these terms mean in the context  
20 of this crime, doesn't apply here in the -- in the  
21 sense of referred to a robbery and the purposeful  
22 taking of money and that kind of thing.

23 So this is an accurate statement of the  
24 law just designed to give the jury some meaning.

25 THE COURT: An accurate statement based on

1 what authority, Ms. Seifter?

2 MS. SEIFTER: The cases we discussed this  
3 morning, Your Honor, talking about the -- the  
4 notion that not all circumstances in which there is  
5 some profit motive are sufficient.

6 MR. LI: Does the Court need a copy of the  
7 pleading?

8 THE COURT: I actually do.

9 MR. LI: If I may approach.

10 THE COURT: If you have a specific case that  
11 relates to that. Again, there's not anything like  
12 this in a negligent homicide case that anyone's  
13 ever been able to present to me anyway.

14 Thank you, Mr. Li.

15 MR. LI: You're welcome, Your Honor.

16 MS. SEIFTER: Your Honor, the case I'm  
17 referring to is the Sansing case that we cite. But  
18 in terms of this instruction, it's simply a  
19 modification of the language to apply to the facts  
20 of this case.

21 THE COURT: It would be a matter of argument.  
22 I'm going to delete that sentence that begins  
23 "similarly." The -- also the RAJI which the state  
24 provided -- now, I -- counsel, I'm going to submit  
25 all four of the documents -- all four documents to

1 be filed as your proposed instructions. Those will  
2 be on record.

3 MR. LI: Your Honor, if I may just have one  
4 moment because --

5 THE COURT: Yes.

6 MR. LI: This -- this particular sentence is a  
7 modification of the existing RAJI sentence, which  
8 I'll just bring up to the Court and --

9 THE COURT: I got that right here.

10 MR. LI: Okay. If you could look at the  
11 bracketed language there. That's the concept  
12 that's trying to be captured in this. It's not  
13 pulled out of whole cloth. It's trying to modify  
14 what we think is not -- you know -- particularly  
15 controversial proposition.

16 And it -- and it -- and normally this  
17 pecuniary gain, as the Court is aware, involves  
18 first-degree murder, murder for hire, those sorts  
19 of things. And so the current instruction has a  
20 bracketed piece of language that explains that not  
21 every robbery -- you know -- results in -- in --  
22 you know -- pecuniary gain aggravating  
23 circumstances.

24 So we have take -- we've taken this  
25 bracketed language here and attempted to adapt it

1 to this particular set of circumstances.

2 THE COURT: I see the bracketed language there  
3 at the end.

4 Ms. Polk, anything further on this?

5 MS. POLK: Your Honor, just that it is a  
6 matter of argument. But additionally the word  
7 "instead" should be deleted. That is not part of  
8 the RAJI as well. That -- that next sentence  
9 should start with the word "there."

10 THE COURT: Okay. Here's what I'm thinking.  
11 And, again, I've -- I've -- I've noted the whole  
12 concept of legal concerns. I've noted that and not  
13 having direct precedent to work with. But I'm  
14 thinking of the situation in the Far West Water &  
15 Sewer, in a context like that and that kind of  
16 thing.

17 Again, we've also talked about -- quite a  
18 bit about the vicarious liability form of  
19 instructions that went in, and there was a  
20 discussion there and the defense not wanting a  
21 discussion that -- that dealt with other aspects of  
22 acting on behalf of the corporation. There's that  
23 whole aspect too. But it's a matter of argument.  
24 And you've got your position of record. I'll take  
25 out "instead."

1 The other thing that's not in here I see  
2 is on page 3 after the first sentence, last  
3 paragraph. I think the -- yeah. It actually has,  
4 however, the existence of a pecuniary motive. And  
5 that's as the RAJI has the "however" in there.

6 Either counsel have a position on that?  
7 Ms. Polk.

8 MS. POLK: The state would ask that our  
9 instruction be consistent with the RAJI  
10 instruction, Your Honor.

11 THE COURT: Mr. Kelly -- or Ms. Seifter. I'm  
12 sorry.

13 MS. SEIFTER: That particular change is okay  
14 with us, Your Honor.

15 THE COURT: Okay. I'm going to put the  
16 "however" in there. All right.

17 Ms. Polk, other comments?

18 MS. POLK: Your Honor, pursuant to an  
19 agreement with the defense, the state will not be  
20 arguing the financial harm. And that can therefore  
21 be deleted from the instructions where it appears.

22 THE COURT: So it now just reads "emotional  
23 harm"?

24 MS. POLK: Yes.

25 THE COURT: Okay. On page 4 that language

1 comes out. And then, of course, it will come out  
2 of the proposed verdict forms as well. Okay.

3 Anything else, Ms. Polk?

4 MS. POLK: No, Your Honor. Thank you.

5 THE COURT: And you'll note that I made some  
6 modifications incorporating some language from both  
7 proposed instructions under item 3. But I  
8 thought --

9 Well, Ms. Seifter, your -- your  
10 suggestions?

11 MS. SEIFTER: Thank you, Your Honor.

12 First of all, on the actual language of  
13 No. 3, the parties have agreed to return the  
14 instruction to the original form that you drafted  
15 and circulated this morning.

16 THE COURT: Okay. Do you have that? We'll  
17 make the change right here.

18 MS. SEIFTER: It read --

19 THE COURT: Defendant was in a unique --

20 MS. SEIFTER: The defendant was in a unique  
21 position of trust with each victim. And we'll  
22 preserve all of our objections obviously --

23 THE COURT: Yes.

24 MS. SEIFTER: -- incorporated in our brief.

25 THE COURT: So then page 4 will be "was in a

1 unique position" and then, of course, the verdict  
2 forms will be revised as well. Okay.

3 MS. SEIFTER: With respect to the limiting  
4 instruction, Your Honor, we again would ask the  
5 Court to give the instruction that we drafted  
6 specifically because with respect to what is  
7 alleged in this hearing, the purpose that -- that  
8 is permissible is not relevant.

9 And so instructing the jury that they can  
10 consider it for that purpose would be confusing,  
11 perhaps misleading. And it would -- is cleaner and  
12 simpler to just tell them that for this hearing  
13 they can't consider it regardless of what they  
14 might have been able to consider it for before.

15 THE COURT: And -- and there are potential  
16 misuses of that evidence. And -- and there was a  
17 detailed limiting instruction.

18 Ms. Polk, you obviously found it and used  
19 similar language.

20 What is the relevance -- what was the  
21 purpose, the permissible purpose, as effect on the  
22 listener? What's -- what's the relevance in -- in  
23 regard to this alleged aggravating circumstance?

24 MS. POLK: Your Honor, the aggravating  
25 circumstance is the position of trust. And both of

1 those audio clips -- the state would offer them as  
2 relevant to the -- to prove the position of trust  
3 that Mr. Ray was in with respect to each of the two  
4 victims -- Kirby Brown and James Shore.

5 I would ask that that last sentence be  
6 expanded to add "or the speaker." So it would  
7 read, the only purpose you may consider this  
8 evidence for is what effect, if any, the statements  
9 may have had on the listener or the speaker.

10 I believe that those two clips are  
11 relevant to the state of mind of both of the  
12 victims and the trust that they were putting in  
13 Mr. Ray. They both -- both of those audios, again,  
14 not offered to prove the truth of the matter  
15 asserted but to prove that this was their state of  
16 mind going into the sweat lodge; that they were  
17 trying to follow and -- and that they had this --  
18 this trust, this belief, going into the sweat  
19 lodge; that they needed to continue to act in  
20 conformity with what Mr. Ray was teaching them  
21 throughout the week.

22 MS. SEIFTER: Your Honor, just on that last  
23 point.

24 THE COURT: Yes.

25 MS. SEIFTER: My recollection, and we can

1 certainly check the transcript, is that that  
2 argument was entertained and ultimately rejected  
3 during trial, that these were irrelevant to prove  
4 the speaker's present mental state because, in  
5 fact, it was -- it was more of a recollection on  
6 something that had happened.

7 And, as you recall, there was an extended  
8 narrative with respect to Ms. Brown's audiotape.  
9 That would not be a permissible purpose to instruct  
10 the jury on now.

11 And it also -- it's difficult to see how  
12 this really is anything other than arguing that the  
13 statement is admissible for its truth, meaning to  
14 say that it's proof of what the victim believed  
15 or -- you know -- the position of trust that the  
16 victim -- that the victim understood is,  
17 essentially, the same as saying that the things  
18 that they are saying are true and that inferences  
19 can be drawn from that statement by the jury here.

20 MR. KELLY: Judge, may I -- may I add an  
21 additional concern? Earlier this morning I -- I  
22 believe that there was an agreement that the audio  
23 clips would not be played during the aggravation  
24 phase and that they could not be argued as being  
25 offered for the proof of the matter asserted.

1 I just heard Ms. Polk make the argument  
2 that they are, that she wants to offer them for the  
3 truth of the matter. So I would join in  
4 Ms. Seifter's objection.

5 And then importantly, Judge, the  
6 additional point is this jury instruction as  
7 drafted simply tells the jury, in my opinion, to go  
8 back and listen to 754 and 743 and identify the  
9 problem we're talking about. I would submit that  
10 the entire limiting instruction should be stricken  
11 with an admonition from the Court that that cannot  
12 be argued for purposes of aggravation.

13 Ms. Polk explained a belief that she had  
14 additional evidence from witnesses who testified  
15 in -- at trial, were cross-examined and confronted  
16 as to whether or not they felt safe in Mr. Ray's  
17 sweat lodge ceremony. And she's free to make that  
18 argument. That's evidence in the trial.

19 But now if she's going to argue the truth  
20 of this matter asserted in a hearsay clip and then  
21 those clips are going to be identified by number,  
22 not only is the argument improper, but I would  
23 submit that identifying the numbers is simply going  
24 to ring the bell. First thing the jury is going to  
25 do is go back to listen to these two clips.

1 THE COURT: Ms. Polk, they were admitted at  
2 trial for a very specific purpose. And -- and to  
3 expand it here -- I mean, that seems to be what  
4 you're suggesting. I recall Ms. Kirby Brown's  
5 statement and the instruction there. Was the  
6 identical instruction given with regard to  
7 Mr. Shore?

8 MS. POLK: Your Honor, an abbreviated version  
9 was given. Actually, the abbreviated one was given  
10 with respect to Ms. Brown. That longer one must  
11 have been given for the James Shore clip.

12 THE COURT: While you're doing that --

13 MS. POLK: I'm not sure.

14 THE COURT: -- I'm just going to ask about  
15 timing. Was the other evidentiary issue resolved?  
16 Is there any other legal matter to discuss other  
17 than the instructions? I -- I just need to know  
18 for timing.

19 MR. KELLY: I believe by striking financial  
20 harm there's no other pending legal instructions  
21 that I'm aware of, Judge.

22 THE COURT: Okay. Because I'm just looking  
23 at -- one of the jurors had called and was a bit  
24 late, I think arrived maybe 15 minutes ago. So --  
25 so the whole jury has not been waiting particularly

1 a long time. But if we look at just copying the  
2 number of instruction, it'll be 15, 20 minutes,  
3 something like that, to get that done. So I just  
4 wanted to keep that in mind, see where we are with  
5 time.

6 MS. POLK: Your Honor, I -- we -- we found a  
7 very limited -- a very short instruction that was  
8 given with respect to Ms. Brown's statement. And  
9 it says simply that Exhibit No. 735 is to be  
10 considered only for the effect that Ms. Brown's  
11 statements may have had on defendant. You should  
12 not consider it for any other purpose.

13 But I -- I think that we should  
14 double-check. I'm not sure that we have what was  
15 actually read to the jury. This is what we were  
16 able to pull.

17 But if I may make argument, Your Honor,  
18 the -- first of all, this jury in considering the  
19 aggravated circumstances gets to consider all of  
20 the trial evidence.

21 THE COURT: Yes.

22 MS. POLK: And they're being instructed on  
23 that. That's what the law is. They get to  
24 consider everything that came in the trial. Under  
25 Rule 803.3, the existing mental, emotional, or

1 physical condition, that allows a statement of the  
2 declarant's then existing state of mind, emotion,  
3 sensation, or physical condition. And that would  
4 be the hearsay exception that the state would offer  
5 these two audio clips.

6 I do not intend to play them again for  
7 the jury because the jury has already heard them.  
8 But I certainly do intend to argue that both of  
9 those audio clips are relevant to the existing  
10 state of mind of both Kirby Brown and James Shore,  
11 as well as its effect on the listener, which was  
12 Mr. Ray, and that that is relevant on this issue of  
13 position of trust.

14 THE COURT: Mr. Kelly.

15 MR. KELLY: Judge, that was the argument made  
16 during the guilt phase of this trial, and the  
17 government doesn't get to change the rules as we  
18 proceed.

19 The court order, which was in effect when  
20 you rejected the 803.3 argument by the state during  
21 the -- during the guilt phase, cannot now somehow  
22 apply in the aggravation phase. Simply can't do  
23 it.

24 If -- if -- if -- I would submit, Judge,  
25 that if Ms. Polk, contrary to this court's order

1 back in -- and I'm guessing as to the date, but  
2 March or April, is going to make an improper  
3 argument, that, Judge, would be grounds for a  
4 mistrial.

5 THE COURT: Specifically with regard to  
6 Ms. Brown's statement, there was a lot of  
7 information that could come in -- that could fall  
8 under that specific prohibition there.  
9 Factually -- if you recall, there was factual  
10 memory in there. And that just can't come in. So  
11 there is this mixture of the statement and --  
12 and -- and what it might mean.

13 So what -- Ms. Polk, go ahead. Any  
14 response? Any further response to that?

15 MS. POLK: Just that, again, this is moving  
16 into a new phase that now what is relevant, now  
17 what the jury needs to consider, is information  
18 that would prove beyond a reasonable doubt this  
19 position of trust that Mr. Ray was in. And that's  
20 the purpose the state has in -- in arguing those  
21 two audios. Because it shows the state of mind and  
22 all the reasonable inferences that the jury can  
23 draw --

24 THE COURT: I need an example of what you mean  
25 "it shows the state of mind." What -- what -- what

1 statement there shows a state of mind?

2 MS. POLK: With respect to Mr. Shore, the  
3 statement shows that that is his state of mind,  
4 that he is acting as the samurai, that he wants to  
5 live impeccably. And, of course, we know that  
6 his -- his behavior ultimately in -- in the sweat  
7 lodge was certainly admirable behavior, what he did  
8 to save Sidney Spencer and then what he tried to do  
9 to assist Kirby Brown.

10 But, again, that statement is just a  
11 state of mind. It wasn't offered to prove that he  
12 is a samurai because obviously he is not, but that  
13 this is somebody who is a student of Mr. Ray, this  
14 is what the teachings of the week have been, and  
15 that this is somebody who is listening to and  
16 reflecting those teachings back. And it's  
17 information that Mr. Ray then has.

18 He knows that he is in that position of  
19 trust, that he has students who are learning from  
20 him, who are believing him, who are setting aside  
21 their -- their common sense in some cases, but  
22 certainly their instincts, their -- their own  
23 boundaries that would tell them to get out of the  
24 sweat lodge because Mr. Ray has said, you will be  
25 safe, that you can push, that this is what you need



1 to do to have this breakthrough, that that is what  
2 the participants then do.

3 So it's all relevant to this position of  
4 trust that Mr. Ray is in and that he has  
5 established with respect to the three victims.

6 THE COURT: I'd like one person to address it.  
7 Ms. Seifter is primarily addressing this, but --

8 MR. KELLY: Judge, on the -- on this  
9 particular issue in regards to the relevancy, I --  
10 I would note, and, of course, the record speaks for  
11 itself, that the prosecutor was admonished during  
12 her closing argument not to make this very  
13 argument. And -- and -- and we do not concede or  
14 waive, as Ms. Seifter objected, to the very fact  
15 that this is an aggravating circumstance, which  
16 violates my client's right of confrontation, this  
17 ambiguous position of trust.

18 But now to aggravate it by a misuse of  
19 the evidence in violation of specific orders of  
20 this court, Judge, is -- it's improper. And my  
21 recollection is during Ms. Polk's closing  
22 arguments, as objected by Mr. Li, you admonished  
23 and said, no, this very argument is improper.

24 And -- and so simply going into an  
25 aggravation phase does not now open the door to

1 impermissible argument or somehow negate the prior  
2 orders of this court as to the relevancy and  
3 admissibility of evidence. It doesn't happen that  
4 way.

5 THE COURT: Ms. Seifter noted this, I think.  
6 And what I -- I see Ms. Polk suggesting is this:  
7 This is a new phase of the trial, and there's --  
8 there's another ground for admissibility that  
9 should be considered in this phase of the trial.

10 Ms. Seifter, I'm not saying you recognize  
11 that as an appropriate argument, but you're --  
12 you're saying no, that -- I think you're saying  
13 that the original guilt trial rulings should just  
14 hold and there -- there shouldn't be any type of  
15 use of the evidence made in -- in the second phase.

16 MS. SEIFTER: I would agree with that,  
17 Your Honor, in the sense that if -- if the state is  
18 going to draw upon evidence that was admitted  
19 during the guilt phase, that that is the evidence.  
20 It was admitted for purposes that are not what the  
21 state is now arguing.

22 And nothing has changed with respect to  
23 your ruling on that. It -- it was not admissible  
24 for the exception -- the expanded exception that  
25 the state now wants to allege. And therefore that

1 has to be the guiding principle as well here.

2 THE COURT: So what can happen is this: The  
3 evidence can be argued for the purpose it was  
4 admitted for in the original trial, Ms. Polk. And  
5 that is effect on listener. That was the -- that  
6 was the only purpose it was admitted for. And that  
7 will hold at this point.

8 As I said in those discussions back then,  
9 this kind of evidence where you -- you don't have  
10 the ability of the defense to do any  
11 cross-examination into it. That evidence raises a  
12 number of concerns anyway. So if -- if there's  
13 a -- if it can be referred to to the extent it was  
14 admitted originally, which is the effect on  
15 listener.

16 So that -- and then I'm going to --  
17 Mr. Kelly specifically articulated a suggestion  
18 that -- I'm just going to remove that paragraph,  
19 then. And that will be the standing rule, just  
20 what was instructed originally. That's the purpose  
21 and that's what can be argued. Okay.

22 Ms. Seifter.

23 MS. SEIFTER: I think that's all.

24 THE COURT: Ms. Polk, anything else?

25 MS. POLK: No, Your Honor. Thank you.

1 THE COURT: We'll try to get these done and --  
2 and at least get them read to the jury. And  
3 that'll give me a chance to remind people of the  
4 admonition, check on that, and at least get that  
5 done before the lunch break.

6 Mr. Kelly.

7 MR. KELLY: Judge, in regards to the verdict  
8 form, it will -- it'll be necessary to make the  
9 correction regarding the position of trust, as  
10 well.

11 THE COURT: Right. I think Ms. Troxell will  
12 be in court. And she's making notes on that. I am  
13 as well.

14 One other minor thing. I noticed a  
15 discrepancy between the RAJI and the -- and the  
16 actually suggested verdict form. And it has to do  
17 with the last paragraph on page 3. It has the  
18 phrase "or the expectation of receipt" set off by  
19 commas. To be consistent it probably should be.

20 But does anybody have a position one way  
21 or the other on that?

22 Bottom page 3, last paragraph, first  
23 sentence. The taking off the -- the setting off  
24 the "or the expectation of the receipt," the  
25 setting that off by commas?

1 MS. POLK: Your Honor, the state requests that  
2 that language be in there.

3 THE COURT: That's -- the way it is in the  
4 RAJI it has a comma just after receipt. It should  
5 either have a comma on both sides of the phrase or  
6 neither. So --

7 MR. KELLY: Judge, I believe they should be  
8 consistent between the form and the definition.

9 THE COURT: I'll change the RAJI and add the  
10 comma. Then we'll get the finals drafted up. I'll  
11 have them brought out for a final proofreading. So  
12 I'd still like to make a record when the final set  
13 is complete.

14 Thank you.

15 (Recess.)

16 THE COURT: The record will show the presence  
17 of Mr. Ray and the attorneys.

18 Counsel, you've made your record on -- on  
19 objection for both sides. But with those all now  
20 of record, any -- any problems with the  
21 instructions as I've decided them? I mean, other  
22 than -- everything is preserved so far. But did  
23 you find any typos or any -- any problems?

24 MS. POLK: No, Your Honor. They look fine to  
25 the state.

1 THE COURT: Mr. Kelly.

2 MR. KELLY: Judge, preserving those objections  
3 by Ms. Seifter, myself, Mr. Li, no. They look  
4 fine.

5 THE COURT: Okay. Then we'll -- we'll get  
6 them copied, have the jury come in. And -- and  
7 what I intend to do is get through the instructions  
8 and -- and go through the admonition and then break  
9 for a lunch at that time.

10 So we'll go into the noon hour a little  
11 bit, I would assume.

12 Thank you.

13 (Recess.)

14 (Proceedings continued in the presence of  
15 jury.)

16 THE COURT: The record will show the presence  
17 of Mr. Ray, the attorneys, and the jury.

18 Good morning, ladies and gentlemen.  
19 We're now entering into another phase of the trial.  
20 And I'll be reading instructions to you in a  
21 minute. You'll see exactly what this is all about.

22 I will note that the two alternates have  
23 returned for this portion of the trial. But I want  
24 to inform everybody that the alternates do remain  
25 the alternates. There will not be a reselection

1 after this phase of the trial is concluded.

2 The admonition continues to apply just as  
3 if we were starting again, in terms of not talking  
4 to anyone about the case, even among yourselves,  
5 now until the case is again concluded.

6 And I just wanted to ask. Did anybody  
7 have any concerns about the admonition over the  
8 break? Have there been any concerns in that  
9 regard? Okay.

10 I know you've been very dedicated  
11 throughout the trial in -- in providing a note to  
12 me if you've had any concerns about that  
13 whatsoever.

14 So I'm going to ask you to -- to do at  
15 this time is look at the -- well, the instructions.  
16 And Ms. Rybar is going to hand you the -- the  
17 further instructions to the jury. You all have  
18 copies of those. And you will keep your other  
19 instructions, though. You'll -- those instructions  
20 may apply. And I'll be reading you an instruction  
21 about that in a moment as well.

22 Then also just about the timing, what I'm  
23 going to do, ladies and gentlemen, I'm going to go  
24 through these instructions, give you a little bit  
25 more information just about scheduling, and then we

1 will take the -- the lunch noon recess, probably a  
2 little bit late, though.

3 Okay. You all have copies of the further  
4 instructions to the jury? All right.

5 Further instructions to the jury. In the  
6 first phase of this trial you have returned a  
7 verdict of guilty. Now we are about to begin the  
8 second phase of the trial. The state has alleged  
9 aggravating circumstances in this case. Under  
10 Arizona law the jury must decide whether the  
11 aggravating circumstances exist.

12 The law requires the state to prove these  
13 specific aggravating circumstances to you beyond a  
14 reasonable doubt. Based on that allegation, we are  
15 now beginning an aggravating circumstance hearing.

16 Before evidence is presented, you must  
17 start with the presumption that the alleged  
18 aggravating circumstance is not proven. The state  
19 must present evidence to prove an aggravating  
20 circumstance beyond a reasonable doubt.

21 If you conclude that the state has not  
22 met its burden of proof beyond a reasonable doubt,  
23 then you must find the alleged aggravating  
24 circumstance not proven.

25 The defendant is not required to testify

1 or produce evidence of any kind. The decision on  
2 whether to testify or produce evidence is left to  
3 the defendant acting with the advice of an  
4 attorney. The defendant's decision not to testify  
5 or produce evidence is not evidence of the  
6 existence of any aggravating circumstance.

7 It is your duty as a juror to decide this  
8 case by applying these jury instructions to the  
9 facts as you determine them. You must follow these  
10 jury instructions. You may also rely on the jury  
11 instructions that were read and given to you  
12 earlier. They are the rules you should use to  
13 decide this case.

14 It is your duty to determine what the  
15 facts are in the case by determining what actually  
16 happened. Determine the facts only from the  
17 evidence produced in court. When I say "evidence,"  
18 I mean the testimony of witnesses and exhibits  
19 introduced in court during the earlier trial, as  
20 well as any testimony or exhibits introduced at the  
21 aggravation circumstance hearing.

22 You should not guess about any fact. You  
23 must not be influenced by sympathy or prejudice.  
24 You must not be concerned with any opinion that you  
25 feel that I have about the facts. You, as jurors,

1 are the sole judges of what happened.

2 You must consider all these instructions.  
3 Do not pick out one instruction or part of one and  
4 ignore the others. As you determine the facts,  
5 however, you may find that some instructions no  
6 longer apply. You must then consider the  
7 instructions that do apply together with the facts  
8 as you have determined them.

9 The lawyers will again talk to you about  
10 the law and the evidence. What the lawyers say is  
11 not evidence, but it may help you to understand the  
12 law and the evidence.

13 You must decide whether the state has  
14 proven an alleged aggravating circumstance by  
15 determining what the facts in the case are and  
16 applying these jury instructions. You must not  
17 consider the possible punishment in reaching a  
18 decision. Punishment is left to the Judge.

19 You are to determine what the facts in  
20 the case are from the evidence produced in court  
21 during the trial or the aggravating circumstance  
22 hearing.

23 If the Court sustained an objection to a  
24 lawyer's question, you must disregard it and any  
25 answer given. Any testimony stricken from the

1 court record must not be considered.

2 Evidence may be direct or circumstantial.  
3 The law makes the distinction between direct and  
4 circumstantial evidence. It is for you to  
5 determine the importance to be given to the  
6 evidence regardless of whether it is direct or  
7 circumstantial.

8 In considering the evidence, you must  
9 decide whether to believe the witnesses and their  
10 testimony. As you do this, you should consider the  
11 testimony in light of all the other evidence in the  
12 case. This means you may consider such things as  
13 the witness's ability and opportunity to observe,  
14 their manner and memory while testifying, any  
15 motive or prejudice they might have, and any  
16 inconsistent statements they may have made.

17 The state has the burden of proving any  
18 aggravating circumstance beyond a reasonable doubt.  
19 In civil cases it is only necessary to prove that a  
20 fact is more likely true than not or that its truth  
21 is highly probable. In criminal cases, such as  
22 this, the state's proof must be more powerful than  
23 that. It must be beyond a reasonable doubt.

24 Proof beyond a reasonable doubt is proof  
25 that leaves you firmly convinced that an alleged

1 aggravating circumstance is proven. There are very  
2 few things in this world that we know with absolute  
3 certainty, and in criminal cases the law does not  
4 require proof that overcomes every doubt.

5 If, based on your consideration of the  
6 evidence, you are firmly convinced that the alleged  
7 aggravating circumstance is proven, you must find  
8 that the alleged aggravating circumstance exists.

9 If, on the other hand, you think there is  
10 a real possibility that the alleged aggravating  
11 circumstance is not proven, you must give the  
12 defendant the benefit of the doubt and find the  
13 alleged aggravating circumstance not proven.

14 The state has alleged the following  
15 aggravating circumstances:

16 1. The defendant committed the offense  
17 as consideration for the receipt or in the  
18 expectation of the receipt of anything of pecuniary  
19 value.

20 In order to find this aggravating  
21 circumstance, you must find that the state has  
22 proven beyond a reasonable doubt that the  
23 defendant's motive, cause, or impetus for the  
24 commission of negligent homicide was consideration  
25 for the receipt or the expectation of receipt of

1 pecuniary value. This finding may be based on  
2 tangible evidence and/or strong circumstantial  
3 evidence. Pecuniary value may be money or  
4 property.

5 You need not find that the consideration  
6 for the receipt or the expectation of the receipt  
7 of the pecuniary value was the sole motivation or  
8 cause of the negligent homicide in order to find  
9 that the circumstance exists.

10 However, the existence of a pecuniary  
11 motive at some point during the event surrounding  
12 the negligent homicide is not enough to establish  
13 this aggravating circumstance. There must be a  
14 connection between the motive and the killing. The  
15 mere fact that the person was killed and the  
16 defendant made a financial gain does not by itself  
17 establish this aggravating circumstance.

18 2. The victim, or if the victim has died  
19 as a result of the conduct of the defendant, the  
20 victim's immediate family, has suffered emotional  
21 harm.

22 3. The defendant was in a unique  
23 position of trust with each victim.

24 Each aggravating circumstance is a  
25 separate and distinct allegation. You must decide

1 each aggravating circumstance separately on the  
2 evidence with the law applicable to it uninfluenced  
3 by your decision on any other aggravating  
4 circumstance.

5 You may find that the state has proved  
6 beyond a reasonable doubt all, some, or none of the  
7 aggravating circumstances. Your finding for each  
8 aggravating circumstance must be stated on the  
9 form.

10 All of you must agree before you may find  
11 an aggravating circumstance proven beyond a  
12 reasonable doubt or not proven. Your foreman will  
13 be in charge during your deliberations and will  
14 sign the verdict forms.

15 You will be given three verdict forms on  
16 which to indicate your decisions. They read as  
17 follows:

18 And, again, ladies and gentlemen, I have  
19 the only copies of those; and once again they are  
20 in yellow. And I will go through them. All of the  
21 forms are captioned State of Arizona versus James  
22 Arthur Ray, and they have a case number on it. And  
23 I'll just start with the first one.

24 Aggravating circumstance verdict, victim  
25 Kirby Brown, Verdict Form Count I. And it reads,

1 we, the jury, duly empaneled and sworn in the  
2 above-entitled action, upon our oaths do find the  
3 following: And then there are one of two boxes to  
4 approve down to these two columns. And it lists  
5 the alleged aggravating circumstances.

6 It has No. 1, the defendant committed the  
7 offense as consideration for the receipt or in the  
8 expectation of the receipt of anything of pecuniary  
9 value. Again, there's a place to -- to check one  
10 or the other boxes.

11 2. Excuse me. 2. The victim, or if the  
12 victim as has died as a result of the conduct of  
13 the defendant, the victim's immediate family  
14 suffered emotional harm.

15 And 3. The defendant was in a unique  
16 position of trust with the victim.

17 And then it reads, the above is the  
18 unanimous finding of the jury, signature line for  
19 the foreman.

20 Then there is Verdict Count II. Again  
21 the caption, reading we the jury, duly empaneled  
22 and sworn in the above-entitled action, upon our  
23 oaths do find the following: And, again, two  
24 columns, one or the other boxes to check.

25 1. The defendant committed the offense

1 as consideration for the receipt or in the  
2 expectation of the receipt of anything of pecuniary  
3 value.

4 So this is Verdict Form Count II as to  
5 victim Lizbeth Neuman. And then I read the first  
6 alleged circumstance.

7 No. 2. The victim, or if the victim has  
8 dies as a result of the conduct of the defendant,  
9 the victim's immediate family suffered emotional  
10 harm.

11 And 3. The defendant was in a unique  
12 position of trust with the victim.

13 And, once again, it says, the above is  
14 the unanimous finding of the jury, with a signature  
15 line for the foreman.

16 And then, again, for Verdict Form  
17 Count III, the caption. And it says, victim James  
18 Shore. Once again, we, the jury, duly empaneled  
19 and sworn in the above-entitled action, upon our  
20 oaths do find the following: The two columns of  
21 proven or not proven, aggravating circumstances  
22 that are alleged.

23 No. 1. The defendant committed the  
24 offense as a -- as consideration for the receipt or  
25 any expectation of the receipt of anything of

1 pecuniary value.

2 2. The victim, or if the victim has died  
3 as a result of the conduct of the defendant, the  
4 victim's immediate family suffered emotional harm.

5 3. The defendant was in a unique  
6 position of trust with the victim.

7 And, again, the above is the unanimous  
8 finding of the jury, signature line for the  
9 foreman.

10 Counsel, any additions or corrections to  
11 the instructions and the verdict forms as read?

12 MS. POLK: No, Your Honor.

13 MR. KELLY: No, sir.

14 THE COURT: Okay. Then I -- I do note you all  
15 have copies of those because, as with the other  
16 instructions, you'll be able to have those during  
17 your deliberations.

18 We will go ahead and take the noon recess  
19 before beginning with the evidence. Once again,  
20 remember the admonition applies. And -- and I know  
21 that some of you have deliberated and there might  
22 be a tendency to -- to want to do that since you  
23 have been involved in that. You can't do that now.

24 It's a new part of the trial. You have  
25 to follow all aspects of the admonition, not talk

1 about the case in any way, even among yourselves,  
2 until it is presented to you. So remember all of  
3 those parts of the admonition. Everything applies.

4 And then please be back at 1:20. I'll  
5 ask that you return at 1:20. We'll start as soon  
6 as we can after that.

7 I'll ask the parties just to remain a  
8 moment.

9 Thank you.

10 (Proceedings continued outside presence  
11 of jury.)

12 Counsel, anything else for the record  
13 before the lunch break?

14 MS. POLK: No, Your Honor.

15 THE COURT: Mr. Kelly?

16 MR. KELLY: No, sir.

17 THE COURT: We'll be in recess until 1:20.

18 Thank you.

19 (Recess.)

20 (Proceedings continued in the presence of  
21 jury.)

22 THE COURT: The record will show the presence  
23 of Mr. Ray, the attorneys, and the jury.

24 Ms. Polk.

25 MS. POLK: Thank you, Your Honor.

1 THE COURT: Do you wish to proceed with an  
2 opening?

3 MS. POLK: Yes. Thank you.

4 Good afternoon, ladies and gentlemen.  
5 We're now beginning the second phase of this trial,  
6 and at this phase the state will be presenting only  
7 three witnesses.

8 The state has alleged aggravating  
9 circumstances for this case. And under Arizona law  
10 you, the jury, must decide whether each of these  
11 aggravating circumstances exist beyond a reasonable  
12 doubt with respect to each count of negligent  
13 homicide.

14 We've alleged three aggravating  
15 circumstances: That Mr. Ray was in a unique  
16 position of trust with respect to each of the three  
17 victims, that Mr. Ray committed the offenses as  
18 consideration for the receipt or any expectation of  
19 the receipt of pecuniary gain, or money, and that  
20 the immediate family of each of the three victims  
21 has suffered emotional harm.

22 The state has alleged, first of all, that  
23 Mr. Ray, the defendant, was in a unique position of  
24 trust with each of the three victims. In support  
25 of this aggravating circumstance, the state alleges

1 that Kirby Brown, James Shore, and Liz Neuman all  
2 arrived at Angel Valley full of hope and life and  
3 trusted Mr. Ray with their personal development and  
4 their spiritual growth.

5 When the defendant took it upon himself  
6 to do this extreme event, to intentionally use heat  
7 to cause this ultimate altered mental state,  
8 telling the participants to push through the pain  
9 in order to have a breakthrough, he senselessly  
10 snuffed out their lives.

11 We will not be presenting any additional  
12 witnesses in support of this aggravating  
13 circumstance, but I will ask you to consider the  
14 audio clips and ample trial testimony you've  
15 already heard from other participants about  
16 Mr. Ray's position of trust.

17 The state has alleged that the defendant  
18 committed the offenses for the receipt of pecuniary  
19 gain or in anticipation of the receipt of pecuniary  
20 gain, in this case, money. The state alleges that  
21 Mr. Ray committed the conduct that constitutes the  
22 crime of negligent homicide, the intense sweat  
23 lodge, this intense heat event, in order to create  
24 something of value for the \$10,000 that he charged  
25 for the Spiritual Warrior 2009 event. The

1 expectation of money was the impetus for creating  
2 this extreme event.

3 The events of the week were like a  
4 pyramid with that sweat lodge at the top. That was  
5 the grand-slam event intended to make participants  
6 believe they got something for their money -- the  
7 ultimate experience, this altered mental state.

8 As with the first aggravating  
9 circumstance, the state will not be presenting any  
10 additional witnesses. And we will ask that you  
11 consider the testimony you've already heard and the  
12 evidence already admitted at this trial.

13 The third aggravating circumstance that  
14 the state has alleged is that the immediate family  
15 of each of the three victims has suffered emotional  
16 harm. As you know, Kirby Brown and James Shore  
17 were pronounced dead on arrival at the Verde Valley  
18 Medical Center around 6:30 p.m. on Thursday,  
19 October 8th of 2009.

20 You will learn that Kirby Brown -- Kirby  
21 Brown's mother learned of Kirby's death when a  
22 New York state trooper knocked on her door the next  
23 day.

24 You will learn that Liz Neuman's daughter  
25 in Minnesota had to get on the internet to learn

1 about the sweat lodge deaths, then called the  
2 Flagstaff hospital asking about any Jane Does in  
3 order to learn that it was her mother, Liz, lying  
4 there in a coma in a hospital bed.

5 And you will learn that James Shore's  
6 wife did not hear of James's death until a full day  
7 later, around 10:00 p.m. on Friday night, as she  
8 sat at home waiting for his call to come get him at  
9 the airport.

10 The unexpected deaths of Kirby Brown,  
11 James Shore, and Liz Neuman, who said good-bye to  
12 their loved ones expecting to be back in five days,  
13 came as a shock to the relatives -- a shock that  
14 many are still struggling with today.

15 In this phase of the trial you will hear  
16 testimony from three of those family members --  
17 from a mother, from a daughter, and from a wife.  
18 You will hear from the mother of Kirby Brown, the  
19 daughter of Liz Neuman, and the wife of James  
20 Shore.

21 And at the conclusion of the testimony, I  
22 will be asking that you find beyond a reasonable  
23 doubt the existence of three aggravating  
24 circumstances with respect to each of the three  
25 counts of the negligent homicide -- that Mr. Ray

1 was in a unique position of trust with respect to  
2 the victims, that Mr. Ray committed the offenses as  
3 consideration for the receipt or in anticipation of  
4 the receipt of pecuniary gain, and that the  
5 immediate family of each of the three victims has  
6 suffered emotional harm.

7 Thank you.

8 THE COURT: Thank you, Ms. Polk.

9 Mr. Kelly.

10 MR. KELLY: Thank you, Judge.

11 I don't know if you can hear me. Perhaps  
12 I should get the microphone. While Ms. Polk is  
13 doing that, let me mention that we only asked you  
14 to do one thing in this trial. And that was to  
15 follow the law as set forth by the State of Arizona  
16 and apply that law to the facts. This go around  
17 the same law applies. It's beyond a reasonable  
18 doubt. And you have to follow that law if you're  
19 going to adhere to your oath.

20 I can't stand up here and lie to you  
21 and -- and not say that I'm not extremely  
22 disappointed with the verdict of guilt. You've  
23 convicted Mr. Ray of murder, homicide. You did so  
24 in about five hours, which is less than some of the  
25 testimony of some of the witnesses.

1 Ms. Polk just mentioned to you that  
2 during this phase, these aggravating circumstances  
3 phase, that you have to think back to the testimony  
4 during the last four months, in addition to the  
5 testimony to be presented during these three brief  
6 witnesses, and make a determination as to whether  
7 the State of Arizona has proven beyond a reasonable  
8 doubt each of the alleged aggravators.

9 You set aside sympathy and prejudice.  
10 That's the law of the State of Arizona. It's on  
11 the first page of the jury instructions. You have  
12 to look at the elements of the aggravating factors  
13 and not make an assumption. You shall not guess  
14 about a fact. Recall that law? Mr. Li argued it.  
15 You must give the benefit of the doubt to Mr. Ray.  
16 Do you recall that? Well, that's the law.

17 You think back four and a half months ago  
18 during the jury selection process, I asked each of  
19 you with that little book whether you could set  
20 aside those human traits and respect the integrity  
21 of this system and follow the law. That's all  
22 we're asking again.

23 If you take time to consider the actual  
24 elements of the aggravating factors, if you then  
25 couple that with the actual testimony presented

1 from this witness stand and then make a  
2 determination as to whether or not the government  
3 has proven that beyond a reasonable doubt, then you  
4 respect the integrity of our justice system. If  
5 you do anything less, it's failing.

6 THE COURT: Thank you, Mr. Kelly.

7 Ms. Polk, you may proceed with your first  
8 witness.

9 MS. POLK: The state calls Andrea Puckett,  
10 please.

11 THE COURT: Can you please step where the  
12 bailiff is directing you.

13 Raise your right hand to be sworn by the  
14 clerk.

15 ANDREA PUCKETT,  
16 having been first duly sworn upon her oath to tell  
17 the truth, the whole truth, and nothing but the  
18 truth, testified as follows:

19 THE COURT: Ma'am, would you please start by  
20 stating and spelling your full name.

21 THE WITNESS: Andrea Puckett. A-n-d-r-e-a.  
22 Puckett is P-u-c-k-e-t-t.

23 THE COURT: Thank you.

24 Ms. Polk.

25 MS. POLK: Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY MS. POLK:

3 Q. Ms. Puckett, will you start by telling  
4 the jury what your relationship is to Liz Neuman.

5 A. **She's my mother.**

6 Q. And, Ms. Puckett, how old are you today?

7 A. **27.**

8 Q. Will you tell the jury when your birthday  
9 is.

10 A. **October 8th, 1983.**

11 Q. And October 8 is also what?

12 A. **The day of the sweat lodge.**

13 Q. Are you employed?

14 A. **Yes.**

15 Q. And tell the jury what you do.

16 A. **I'm a supervisor for health advising for  
17 a corporate wellness company.**

18 Q. What community do you live in?

19 A. **Minneapolis.**

20 Q. Maybe you can pull the microphone a  
21 little closer and make sure we can all hear you  
22 better.

23 In what community in Minneapolis?

24 A. **Bloomington, Minnesota.**

25 Q. Where did your mother live?

1 A. **Prior Lake, Minnesota.**

2 Q. How far from Bloomington is Prior Lake?

3 A. **About 12 miles.**

4 Q. Are you also in school?

5 A. **Yes.**

6 Q. Can you tell the jury what you're doing  
7 in school.

8 A. **I'm getting my master's of business  
9 administration.**

10 Q. Where are you doing that?

11 A. **The University of Minnesota.**

12 Q. What is your time schedule in terms of  
13 being able to graduate with that master's?

14 A. **Probably another year or two.**

15 Q. How long have you been in school?

16 A. **About three years.**

17 Q. And are you married?

18 A. **Yes.**

19 Q. Who is your husband?

20 A. **Justin Puckett.**

21 Q. What does he do for a living?

22 A. **He works for his parents' cardboard  
23 recycling company, and is a stay-at-home dad.**

24 Q. And you said a dad. Tell the jury what  
25 you have in terms of a child.

1 A. **I have a nine-month-old daughter.**

2 Q. And what's her name?

3 A. **Lauren.**

4 Q. When was Lauren born?

5 A. **She was born September 30th, 2010.**

6 Q. A little bit less than a year after your  
7 mother passed away?

8 A. **Yes.**

9 Q. Tell the jury, Ms. Puckett, how old your  
10 mother was when she passed away?

11 A. **She was 49.**

12 Q. What did she do for a living?

13 A. **She was a database administer.**

14 Q. In what -- in Prior Lake?

15 A. **No. In St. Paul, Minnesota.**

16 Q. Would you describe for the jury  
17 Ms. Neuman's personality.

18 A. **Okay. She was an extremely upbeat,  
19 positive person, very full of life, very  
20 intelligent, strong-willed woman.**

21 Q. Do you have brothers or sisters?

22 A. **Yes. I have two brothers.**

23 Q. And tell the jury about -- what is each  
24 brothers' name and how old they are.

25 A. **Brian, my older brother, is 31. And**

1 **Brett, my younger brother, is 25.**

2 **Q.** And where do they both live?

3 **A.** **Brian lives in Amber Grove Heights,**  
4 **Minnesota; and Brett lives in Prior Lake,**  
5 **Minnesota.**

6 **Q.** Was your mother married at the time of  
7 her death?

8 **A.** **No.**

9 **Q.** And tell the jury about that, if you  
10 would.

11 **A.** **My parents divorced after 23 years of**  
12 **marriage. And that was about six years ago.**

13 **Q.** What was -- what is your father's name?

14 **A.** **Randall Neuman.**

15 **Q.** When did your mother and your father  
16 first meet? Tell them about the relationship a  
17 little bit.

18 **A.** **They met in high school when they were --**  
19 **my mom was 14 and my dad was 16. So they were high**  
20 **school sweethearts and got married shortly after**  
21 **high school.**

22 **Q.** And after the divorce did they remain on  
23 cordial terms?

24 **A.** **Yes. They remained very close friends.**

25 **Q.** And, in fact, did you continue to get

1 together as a family with both your mother and your  
2 father present?

3 **A.** **Yes. We did pretty much every major**  
4 **holiday together as a family. So -- and pretty**  
5 **much every Sunday we got together as a family as**  
6 **well.**

7 **Q.** Has your dad, in fact, been at these  
8 proceedings, this trial?

9 **A.** **Yes.**

10 **Q.** And how about your brothers?

11 **A.** **My younger brother but not my older**  
12 **brother, Brian.**

13 **Q.** Were you familiar, Ms. Puckett, with  
14 James Ray International personally?

15 **A.** **Yes.**

16 **Q.** And how so?

17 **A.** **I attended two free seminars.**

18 **Q.** When did you attend those seminars?

19 **A.** **I don't remember the exact dates.**  
20 **Probably around 2006.**

21 **Q.** Did you attend them with your mother?

22 **A.** **Yes.**

23 **Q.** And will you tell the jury what you know  
24 about your mother's relationship with James Ray  
25 International.

1 **A.** **I know that she was -- started out as a**  
2 **participant about seven years prior to the sweat**  
3 **lodge event. She eventually became more of a**  
4 **leader within his group and joined the Dream Team.**  
5 **And then she was also part of something called**  
6 **"Jet" where she helped to organize other events.**  
7 **She actually organized some events in Minneapolis**  
8 **for him. And I think that was as far as setting up**  
9 **venue and helping to market for the events.**

10 **Q.** And so did Liz actually earn some income  
11 setting up some events for Mr. Ray?

12 **A.** **Yes. She earned commission off those.**

13 **Q.** Can you tell the jury whether your  
14 mother -- what were -- what were her attitudes  
15 toward taking risks?

16 **A.** **She was typically very risk-perverse.**  
17 **She was very levelheaded.**

18 **Q.** And tell the jury what you know about  
19 your mother's, shall we say, stubbornness.

20 **A.** **I don't know if I'd call it**  
21 **"stubbornness," but she definitely was very driven**  
22 **to do what she believed was the right thing.**

23 **Q.** What was your relationship with your  
24 mother like?

25 **A.** **We were very close. We spoke multiple**

1 **times a week via email or over the phone and got**  
2 **together as a family at least once a week. And**  
3 **then her and I would also grab coffee together or**  
4 **lunch together sometimes, just the two of us.**

5 **Q.** And when you'd get together as a family  
6 at least once a week, where was that?

7 **A.** **Typically at my mom's house.**

8 **Q.** Would that be around a meal?

9 **A.** **Yes.**

10 **Q.** Who would be the person doing the  
11 cooking?

12 **A.** **My mom did. She loved to cook.**

13 **Q.** And how large of a gathering would that  
14 typically be when you gathered once a week at your  
15 mom's?

16 **A.** **Usually would be me, my husband, my two**  
17 **brothers, my dad, and usually my two grandmas as**  
18 **well.**

19 **Q.** Does your mother have a mother who's  
20 living?

21 **A.** **Yes.**

22 **Q.** And that would be your grandmother?

23 **A.** **Uh-huh.**

24 **Q.** What is her name?

25 **A.** **Gloria Galli.**



- 1 Q. Where does Gloria live?  
 2 A. **Farmington, Minnesota.**  
 3 Q. How far from Prior Lake is that?  
 4 A. **About 20, 25 miles.**  
 5 Q. And did your mother see her mother  
 6 frequently?  
 7 A. **Probably at least weekly, maybe a couple**  
 8 **times a week.**  
 9 Q. Can you tell the jury how the death of  
 10 Liz has been for your grandmother, for Liz's  
 11 mother?  
 12 A. **Well, my grandma when my mom passed,**  
 13 **which was very difficult for her, and now she**  
 14 **doesn't really like to talk about my mom, even just**  
 15 **normal conversations about her. She's very closed**  
 16 **off and into herself about it.**  
 17 Q. Does your mother have brothers and  
 18 sisters?  
 19 A. **Yes. She has one brother and one sister.**  
 20 Q. And has this been difficult -- has Liz's  
 21 passing been difficult for her brother and sister?  
 22 A. **Yes. Especially on, I know, her sister.**  
 23 **I keep in touch with her more frequently.**  
 24 Q. And what is her sister's name?  
 25 A. **Sarah Bolder.**

- 1 Q. Where does Sarah live?  
 2 A. **She lives in -- she's currently moving, I**  
 3 **believe, into Coon Rapids, Minnesota.**  
 4 Q. Ms. Puckett, did you know ahead of time  
 5 that your mother was coming out to Arizona in  
 6 October of 2009?  
 7 A. **Yes.**  
 8 Q. And how did you know that?  
 9 A. **She had emailed me to ask me if I was**  
 10 **okay with her going to the event over my birthday.**  
 11 **And she also asked if I would like to attend with**  
 12 **her.**  
 13 Q. And were you -- did you consider  
 14 attending?  
 15 A. **I did, but I had school. And so I wasn't**  
 16 **able to miss class.**  
 17 Q. Did you and your mother make plans to  
 18 celebrate your birthday, then, at another time?  
 19 A. **Yes. We planned to celebrate after she**  
 20 **returned.**  
 21 Q. When did you make those plans with your  
 22 mother?  
 23 A. **We talked about it briefly before she**  
 24 **left, but then I had a telephone conversation with**  
 25 **her on October 7th where we made plans where I**

- 1 **would pick her up from the airport on Sunday and we**  
 2 **would grab dinner.**  
 3 Q. Do you know where your mother was on  
 4 October 7?  
 5 A. **She was in town at Sedona with a couple**  
 6 **of other ladies from the group.**  
 7 Q. Had you also talked with your mother  
 8 about plans to go hiking at some point?  
 9 A. **Yes. When I graduated with my**  
 10 **undergraduate degree, my mom had offered to just**  
 11 **have her and I come out to Arizona because she**  
 12 **loves the State of Arizona. And we talked about**  
 13 **either going to the Grand Canyon, or she loved**  
 14 **Sedona. So we thought about going there.**  
 15 **So when she asked me if I wanted to go to**  
 16 **Spiritual Warrior, she also offered as maybe a**  
 17 **second option to go hiking the weekend afterwards,**  
 18 **which I also declined.**  
 19 Q. Is that because of school as well?  
 20 A. **Yes.**  
 21 Q. Now, I wanted to talk about what happened  
 22 in October of 2009. First of all, during that week  
 23 where were you?  
 24 A. **I was in Minneapolis or Bloomington.**  
 25 Q. Were you working and going to school

- 1 then?  
 2 A. **Yes.**  
 3 Q. When did you first learn, Ms. Puckett,  
 4 that something had happened?  
 5 A. **I received a phone call on Friday,**  
 6 **October 9th, around 5:15 p.m., from my cousin who**  
 7 **informed me of something -- that something had**  
 8 **happened.**  
 9 Q. So the -- the -- the sweat lodge was held  
 10 on October 8th in the late afternoon, and the first  
 11 time you heard anything was when?  
 12 A. **October 9th, around 5:00 p.m. central**  
 13 **time.**  
 14 Q. And where does your cousin live that  
 15 contacted you?  
 16 A. **South Carolina.**  
 17 Q. What did you learn at that time?  
 18 A. **I learned that there was an incident that**  
 19 **happened at the event and that two people were dead**  
 20 **and numerous people were in the hospital. But I --**  
 21 **I knew nothing of what -- what happened to my mom.**  
 22 Q. And did you know at that point that it  
 23 involved your mother?  
 24 A. **Yes.**  
 25 Q. You knew that she was at the event?

- 1 **A. Yes.**  
 2 **Q.** But did you know that she was any of the  
 3 casualties at that time?  
 4 **A. I did not. But I assumed because I**  
 5 **hadn't heard from her that she probably was.**  
 6 **Q.** Had you been expecting to hear from your  
 7 mother before Friday night?  
 8 **A. No.**  
 9 **Q.** Do you know when it was your mother had  
 10 planned to return to Minnesota?  
 11 **A. Yes. She planned to return on Sunday,**  
 12 **the 11th.**  
 13 **Q.** After getting that call from your cousin,  
 14 what did you do?  
 15 **A. I was just getting home. And so I went**  
 16 **inside and immediately got on my computer because**  
 17 **she had emailed me her contact information for**  
 18 **Angel Valley. And so I looked up that phone number**  
 19 **and called and left a voicemail because nobody**  
 20 **answered. And then I continued to search online**  
 21 **for more information.**  
 22 **Q.** And about what time Friday night would  
 23 you say this was?  
 24 **A. This was between about 5:30 and 6:15 p.m.**  
 25 **Q.** Okay. So then you went to your computer

- 1 and you did what?  
 2 **A. I searched online for incidents in**  
 3 **Arizona. I don't remember if I knew that it was a**  
 4 **sweat lodge at that point. But I was able to find**  
 5 **an article online about it. And I also got on**  
 6 **Facebook because I was told that there was postings**  
 7 **on my mom's page about what had happened.**  
 8 **Q.** And then what did you do?  
 9 **A. I in one of the articles found a couple**  
 10 **of the hospitals that participants had been taken**  
 11 **to. And so I called Flagstaff Medical Center first**  
 12 **and asked for my mom by name. They told me they**  
 13 **didn't have anybody by that name. And so I almost**  
 14 **hung up to call over to the other hospital but**  
 15 **decided to ask if they had any Jane Does that were**  
 16 **brought in on the 8th as a result of the sweat**  
 17 **lodge incident.**  
 18 **Q.** And what did you learn?  
 19 **A. I learned that they did have a Jane Doe.**  
 20 **And so they transferred me up to the nurse of my**  
 21 **mom.**  
 22 **Q.** And then tell the jury what happened.  
 23 **A. I was able to give a physical description**  
 24 **of my mother, and they were able to then determine**  
 25 **that that was her.**

- 1 **Q.** And that was talking directly to a nurse?  
 2 **A. Yes.**  
 3 **Q.** So you were at home when you learned that  
 4 it was your mother in the hospital?  
 5 **A. Yes.**  
 6 **Q.** Did you learn much about your mother's  
 7 condition at that time?  
 8 **A. Yes. The nurse did share with me that**  
 9 **she was in a coma. She was on a respirator to help**  
 10 **her to breath. And she had some bleeding going on**  
 11 **internally.**  
 12 **Q.** What did you do after talking to the  
 13 nurse at the hospital?  
 14 **A. She had told me that it would probably be**  
 15 **a good idea to come to Arizona. And so my husband**  
 16 **and I left to go to the airport immediately and**  
 17 **were able to get on a flight that night.**  
 18 **Q.** Did you have your daughter with you?  
 19 **A. No. She wasn't born yet.**  
 20 **Q.** Oh. I'm sorry. She was not born yet.  
 21 Did you contact your -- your brothers and  
 22 your dad?  
 23 **A. Yes, I did. As soon as I heard that**  
 24 **something had happened, I called all of them to**  
 25 **tell them that I was going to research more and let**

- 1 **them know what I found out.**  
 2 **Q.** And then Friday night you caught a flight  
 3 out to Phoenix?  
 4 **A. Yes.**  
 5 **Q.** About what time did you arrive in  
 6 Phoenix?  
 7 **A. It was probably about 11:00 p.m.,**  
 8 **midnight.**  
 9 **Q.** What did you do then?  
 10 **A. We got a ride out to Flagstaff from my**  
 11 **mom's cousin Lily.**  
 12 **Q.** And where does Lily live?  
 13 **A. Lily lives in Tempe.**  
 14 **Q.** Did you come up, then, to Flagstaff that  
 15 same night?  
 16 **A. Yes.**  
 17 **Q.** And where did you go when you got to  
 18 Flagstaff?  
 19 **A. We stayed in a hotel overnight to try to**  
 20 **get a couple hours of sleep and then went to the**  
 21 **hospital in the morning.**  
 22 **Q.** And what about your dad and your  
 23 brothers? When did they come in?  
 24 **A. My brothers joined us the next day,**  
 25 **Saturday, the 10th. And my dad joined a few days**

1 later because he had the flu. So he had to wait  
2 until he got better.

3 Q. Eventually how many family members joined  
4 you at Liz's bedside?

5 A. We had my -- myself and my husband. My  
6 two brothers were there, my dad, my aunt and my  
7 uncle, my mom's brother and sister, my grandma, and  
8 then also my mom's two cousins, Lynn and Lily.

9 Q. How many days were all of you, then, here  
10 in Flagstaff at the hospital?

11 A. We were here for about seven days.

12 Q. Will you describe for the jury what those  
13 days were like.

14 A. They were the most difficult seven days  
15 of my life. We got updates daily from doctors to  
16 let us know how she was doing. And every day she  
17 would make -- take one step forward and take two  
18 steps back.

19 And sitting with her was very difficult  
20 because she was in a coma. And she didn't really  
21 look like herself because of all the fluids. So  
22 she was very swollen. She was hooked up to a lot  
23 of machines, including a respirator. And she did  
24 have some bleeding and some minor seizures as well.

25 Q. And you got updates from the doctor every

1 day?

2 A. Yes.

3 Q. During that time did you learn that Liz's  
4 organs were failing?

5 A. Yes. After several days more her organs  
6 began to fail. She had to be put on constant  
7 dialysis. And eventually they weren't able to find  
8 much brain activity going on. And at that point I  
9 believe that three different organ systems were  
10 failing. And we were told that there was almost no  
11 chance of survival or even if there was, she would,  
12 basically, be a vegetable for the rest of her life.

13 Q. Did your family, then, have a difficult  
14 decision to make?

15 A. Yes. We decided, I believe it was  
16 October 16, that we would take her off life support  
17 the next day.

18 Q. And was that a family decision made  
19 together?

20 A. Yes.

21 Q. With the assistance of a doctor?

22 A. Yes.

23 Q. Did you learn that Liz was getting blood  
24 transfusions as well?

25 A. Yes. I learned that she had a lot of

1 blood transfusions, more than you would typically  
2 see. And that was one of the key factors in  
3 helping us decide to pull her off life support.  
4 Because we believed that that blood could go to  
5 somebody else and that's what my mom would want.

6 Q. Once the decision was made to withdraw  
7 life support, was the family all there when that  
8 happened?

9 A. Yes. They removed her from life support  
10 and then brought us into the room. We were all  
11 able to be there with her. And she lived about a  
12 half hour. During that time we sang together as a  
13 family, and we prayed and held her hand.

14 Q. Did you then have your mother's body  
15 taken back to Minnesota?

16 A. Yes. We had her transported back.

17 Q. Did you have services there?

18 A. Yes.

19 Q. Would you tell the jury what you did for  
20 services.

21 A. Yes. We held a small family service in  
22 Shakopee, Minnesota. And we flew her back so that  
23 we could have an open casket ceremony and had plans  
24 to cremate her afterwards.

25 Q. Was it difficult in light of all the

1 media attention to have a private service?

2 A. Yes. I would have liked to have had a  
3 public service to be able to let people know. I  
4 did hear afterwards from a lot of her friends that  
5 they were upset that they weren't able to be there.  
6 But they understood that -- why we didn't want to  
7 put a lot of information out there about it.

8 Q. During the time that you were at the  
9 hospital -- well, when was it that you left  
10 Arizona?

11 A. I believe we left on -- it was either the  
12 18th or the 19th of October.

13 Q. And during that time did you try to find  
14 out information about what had happened?

15 A. Yes. I was contacted by a couple  
16 different participants at Spiritual Warrior, and a  
17 couple of them told me some details of what had  
18 happened.

19 Q. And did you contact people at  
20 Angel Valley?

21 A. Yes. I did call, and I left a message on  
22 the 9th, and did hear back several days later from  
23 Amayra Hamilton.

24 Q. Were you able to learn some information  
25 from Mrs. Hamilton?

1 **A. She didn't give me much information. No.**  
 2 **Q.** Did you also need to make arrangements to  
 3 collect your mother's possession that had been at  
 4 Angel Valley?  
 5 **A. Yes. I spoke with Amayra Hamilton, as**  
 6 **well as I spoke with Lisa Rondan, about getting her**  
 7 **things back.**  
 8 **Q.** And did somebody help you get your  
 9 mother's things back to Minnesota?  
 10 **A. Yes. Someone actually got it back to us**  
 11 **while we were in Flagstaff -- someone named Julie.**  
 12 **Q.** And during the time that you were in  
 13 Arizona at the hospital, were you ever contacted by  
 14 James Ray International or Mr. Ray?  
 15 **A. No.**  
 16 **Q.** At some point did you receive a telephone  
 17 call from Mr. Ray?  
 18 **A. Yes.**  
 19 **Q.** And when was that?  
 20 **A. That was October 18th, the day after she**  
 21 **died.**  
 22 **Q.** And what did you do?  
 23 **A. I hung up.**  
 24 **Q.** Do you recall the names of the other  
 25 participants that you spoke to?

1 **A. If I can refer to my notes. I know that**  
 2 **I spoke with Lisa. I also spoke with Julie, Marta**  
 3 **Reis, and I believe a Rosie as well.**  
 4 **Q.** I want to talk just a little bit or have  
 5 you tell the jury just a little bit about the  
 6 impact on your brothers and some of your other  
 7 family members.  
 8 You mentioned that Brian is your oldest  
 9 brother?  
 10 **A. Yes.**  
 11 **Q.** And how old is he?  
 12 **A. 31.**  
 13 **Q.** Is he married?  
 14 **A. No.**  
 15 **Q.** And has your mother's death been  
 16 difficult for Brian?  
 17 **A. Yes. Brian's struggled with anxiety and**  
 18 **depression as a result of this, and he's also had**  
 19 **high blood pressure to the point of being**  
 20 **hypertensive, and he's on medication for that, as**  
 21 **well as working with therapists. And he's on**  
 22 **medication for his depression as well.**  
 23 **Q.** And your second brother is Brett?  
 24 **A. Brett. Yes.**  
 25 **Q.** And how has this been for Brett?

1 **A. For Brett the hardest thing was probably**  
 2 **the fact that he was living with my mom at the time**  
 3 **when she passed. And he didn't really have a good**  
 4 **situation of anywhere else to live at the time. So**  
 5 **he continued to live in her home for several months**  
 6 **after she passed away. And she had plans to**  
 7 **continue to support him while he finished school,**  
 8 **and now he has to do that on his own.**  
 9 **Q.** Does your -- is -- is Brett -- does Brett  
 10 have a girlfriend?  
 11 **A. Yes.**  
 12 **Q.** And does he have plans to get married?  
 13 **A. Yes.**  
 14 **Q.** Has he spoken to you about your mother  
 15 not being there for his -- his wedding?  
 16 **A. Yes. He's talked about how he's upset**  
 17 **that she won't be there for him, to dance with him**  
 18 **and help with wedding plans and -- and grandkids in**  
 19 **the future too.**  
 20 **Q.** Your father is Randy. How has this been  
 21 for him?  
 22 **A. It's been very difficult for my dad. And**  
 23 **like I mentioned, they've known each other since**  
 24 **they were teenagers, and they remained very close**  
 25 **friends. And he's had the challenge of dealing**

1 **with watching his three children go through this as**  
 2 **well as losing one of his closest and longest**  
 3 **friends.**  
 4 **Q.** And you've already spoken about your  
 5 grandmother and -- and your mother's sister.  
 6 Andrea, for you how has this been?  
 7 **A. It's been very challenging. I think the**  
 8 **hardest thing for me was probably going through**  
 9 **pregnancy not having my mom there to ask her**  
 10 **questions about symptoms or get her advice on**  
 11 **things. And I'd hope that she would be my birth**  
 12 **coach when I had my first child. And so it was**  
 13 **hard going through labor and delivery not having**  
 14 **her there.**  
 15 **And then just missing those conversations**  
 16 **that we had. You know, something comes up, and I**  
 17 **think about, oh, it would be great to be able to**  
 18 **call my mom or grab some coffee to get her advice**  
 19 **on this.**  
 20 **And so I -- I miss her a lot. And there**  
 21 **is a lot of things that I feel like I still could**  
 22 **have learned from her and a lot of conversations we**  
 23 **still could have had.**  
 24 **Q.** And you mentioned having to take your  
 25 mother off life support. That must have been a

1 very difficult thing for you.

2 **A. It was extremely difficult because you**  
3 **know that the machines can sustain her life and**  
4 **that there's a small chance that she could get**  
5 **better. And you want to hang onto that hope. But**  
6 **at the same time you have to think about her and**  
7 **what she would want. And the hardest part of being**  
8 **there was -- was definitely making that decision**  
9 **and having to watch the result of that decision.**

10 **Q.** I just want to have you identify a couple  
11 of photographs.

12 MR. KELLY: Judge, may we approach?

13 THE COURT: Yes.

14 (Sidebar conference.)

15 MR. KELLY: Your Honor, these two photographs  
16 were disclosed in the 58th -- I believe the state's  
17 disclosure sometime in the last couple of days. My  
18 objection is that they do not relate to any of the  
19 alleged aggravating factors. And what they simply  
20 are is pictures of the decedent and her family, not  
21 relevant for purposes of this trial. Their  
22 prejudicial effect outweighs any relevance.

23 And finally, Judge, it's simply an  
24 attempt to appeal to the passions of the jury.

25 THE COURT: Ms. Polk.

1 MS. POLK: Judge, first of all, Exhibit 1091  
2 is a photograph of Liz's mother. The aggravating  
3 factor is emotional harm to immediate family. And  
4 this is Gloria. And she -- the jury is entitled to  
5 see a picture of her mother.

6 The second one is a photograph -- it's a  
7 three-generation photograph with Andrea, her  
8 mother, and her mother's mother. And what Andrea  
9 will testify to is how she wanted to have a  
10 four-generation photograph with her daughter and  
11 that she will not be able to.

12 And, Your Honor, this aggravating factor  
13 is the emotional harm. To suggest somehow the  
14 photograph of the victim or the victim with her  
15 family is prejudicial is simply unwarranted.

16 THE COURT: Mr. Kelly, anything else?

17 MR. KELLY: Judge, she just testified quite  
18 well about the emotional harm she's suffered, and  
19 these photographs add nothing to that testimony.  
20 Simply identifying what the grandma looks like or  
21 three people she wishes she had a photograph of is  
22 unduly prejudicial.

23 THE COURT: Ms. Polk, are these the only  
24 photographs you have for this witness?

25 MS. POLK: Yes.

1 THE COURT: Overruled.

2 (End of sidebar conference.)

3 MR. KELLY: Your Honor, given that discussion,  
4 I would stipulate to speed things up.

5 THE COURT: You -- you may proceed, Ms. Polk.

6 MS. POLK: Thank you, Your Honor.

7 **Q.** Ms. Puckett, I'm going to put on the  
8 overhead Exhibit 1091. Tell the jury who is in  
9 this photograph.

10 **A. That's my mom on the left and my grandma**  
11 **on the right.**

12 **Q.** And do you know when this photograph was  
13 taken?

14 **A. Yes. It was taken at my wedding on**  
15 **May 31st, 2008.**

16 **Q.** And I'm going to put up on the overhead  
17 Exhibit 1090. Will you tell the jury who is in  
18 this photograph.

19 **A. That's my mom on the left, me in the**  
20 **middle, and my grandma on the right.**

21 **Q.** Again, taken at your wedding?

22 **A. Yes.**

23 **Q.** You now have a daughter who's nine months  
24 old?

25 **A. Yes.**

1 **Q.** And you and I had spoken about what you  
2 called a fourth -- fourth-generational picture.  
3 Will you tell the jury what that is.

4 **A. Yeah. It's a picture where you have**  
5 **multiple generations of your family together. And**  
6 **typically you do that with all the women or all the**  
7 **men.**

8 **Q.** Is that something you hoped to do with  
9 your daughter, your mother, and your grandmother?

10 **A. Yes. I had hoped to get one of those**  
11 **pictures. And actually my aunt has one with her**  
12 **daughter and my grandma and her granddaughter. And**  
13 **whenever I see that picture, I -- I'm definitely**  
14 **very saddened by the fact that I can't have that**  
15 **because my mom is going to be missing from that**  
16 **picture.**

17 MS. POLK: Thank you.

18 Thank you, Your Honor.

19 THE COURT: Thank you, Counsel.

20 MR. KELLY: Judge, I have no questions.

21 THE COURT: Ladies and gentlemen, any  
22 questions for this witness?

23 Then, Ms. Puckett, there is one part of  
24 the rule of exclusion of witnesses that does apply  
25 to you. And that is that you can't discuss the

1 case or your testimony with other witnesses until  
2 the case is over.

3 Okay.

4 THE WITNESS: Okay.

5 THE COURT: You may step down now.

6 Thank you.

7 Ms. Polk.

8 MS. POLK: The state calls Ginny Brown.

9 THE COURT: I do want to note that exhibits  
10 1090 and 91 were admitted.

11 (Exhibits 1090 and 1091 admitted.)

12 THE COURT: Please raise your right hand and  
13 be sworn by the clerk.

14 VIRGINIA BROWN,  
15 having been first duly sworn upon her oath to tell  
16 the truth, the whole truth, and nothing but the  
17 truth, testified as follows:

18 THE COURT: And would you also please begin by  
19 stating and spelling your full name.

20 THE WITNESS: My name is Virginia Brown;  
21 V-i-r-g-i-n-i-a, Middle initial -- initial M.,  
22 Brown, B-r-o-w-n.

23 THE COURT: Thank you.

24 Ms. Polk.

25 MS. POLK: Thank you.

1 DIRECT EXAMINATION

2 BY MS. POLK:

3 Q. Good afternoon, Mrs. Brown.

4 A. Afternoon.

5 Q. Can you tell the jury first of all where  
6 you live?

7 A. My husband and I live in Westtown,  
8 New York, which is about 75 miles northwest of  
9 Manhattan.

10 Q. And are you a native New Yorker?

11 A. Yes.

12 Q. How many children -- well, who's your  
13 husband?

14 A. My husband is George Brown.

15 Q. And is he here in the courtroom?

16 A. Yes, he is.

17 Q. Perhaps you could point him out for us.

18 A. He pointed himself out.

19 Q. How many children do you and George have?

20 A. George and I have four children.

21 Q. Can you tell the jury their names and  
22 ages.

23 A. Kirby was our oldest. She would have  
24 been 40. Kate, Katherine Mary Brown, is four years  
25 younger than Kirby; and her brother, Robert Brown,

1 is two years younger than Jean -- I mean than Kate.

2 That makes him 34. And our youngest daughter,

3 Jean, is 28.

4 Q. And have some of Kirby's brothers or  
5 sister -- brother or sisters been here through this  
6 trial?

7 A. Yes. Our son, Bob, accompanied us here  
8 for the first two weeks of testimony in the -- the  
9 beginning of March. Jean was here with me for a  
10 week in May, and she was here with my husband for  
11 the beginning of the closing arguments.

12 Q. And you've also had family relatives who  
13 have been here at various times throughout the  
14 trial?

15 A. Yes. We felt it was important that  
16 someone be here to represent Kirby at the trial.  
17 So I had -- my brother has been here, numerous  
18 friends.

19 Q. Will you tell the jury when you all last  
20 saw Kirby.

21 A. The weekend before Labor Day in early  
22 September of 2009 we were together. She was home  
23 most of that summer.

24 Q. Did you have some family celebrations  
25 that summer?

1 A. Kirby lived in the Baja, in Mexico. And  
2 she had come home in June because her youngest  
3 daughter -- her youngest sister, Jean, was getting  
4 married on July 4th on our property in Westtown.  
5 And then the next month in August her sister Kate  
6 also was married, and her little boy was baptized.

7 So we had those wonderful family  
8 celebrations that summer. And then we had spent a  
9 couple of weekends visiting with friends and having  
10 parties and going up to Bethel Woods in New York.

11 Q. Mrs. Brown, will you tell the jury what  
12 you do for a living.

13 A. I'm a parent educator and also a  
14 therapist. I work for a private agency called the  
15 "Dispute Resolution Center" in Goshen, New York.  
16 And I do educational programs for families that  
17 have teens on probation. I teach anger management.  
18 I -- I do a -- a program to help parents who had  
19 had their children removed because of abuse and  
20 neglect.

21 So a lot of my background is in family  
22 dynamics and -- and healthy family systems. That's  
23 a lot of my teaching. And then in addition to  
24 that, I have a private practice and -- which is a  
25 lot of workshops in local churches, having worked

1 with the Archdiocese of New York for many years  
2 before working for the -- the agency I work for  
3 now.  
4 Q. Are you a licensed social worker?  
5 A. Yes. I'm a licensed clinical social  
6 worker. And George and I have a private practice  
7 in Midtown, New York, where we work with couples,  
8 individuals, work with victims of trauma, and we do  
9 marriage counseling together.

10 Q. Is George also a licensed social worker?

11 A. Yes, he is.

12 Q. How long have you and George been  
13 married?

14 A. We've been married 42 years.

15 Q. You talked about your children. Do you  
16 also have grandchildren?

17 A. Yes. Our son, Bobby, has two little  
18 ones. Lyle is four and George is two. And they're  
19 expecting their third in September. And our  
20 daughter Kate, her little guy is Angus. And he's  
21 two. And she's expecting her second in two weeks.

22 Q. Will you tell the jury -- first of all,  
23 was Kirby single or married?

24 A. Kirby was single.

25 Q. And had she ever been married?

1 A. No. She had never been married.

2 Q. And you said that she was living down in  
3 Mexico?

4 A. Uh-huh.

5 Q. How long had she been living down there?

6 A. She had been living in San Jose Del Cabo  
7 for about ten years. She had a decorative painting  
8 business. She worked with another artist, Nancy  
9 Brazil. They had worked together for -- at that --  
10 that length of time.

11 She -- after she moved there, I knew she  
12 wasn't going to come back after she discovered  
13 surfing. So she would -- she would work very hard  
14 doing decorative painting work in these high-end  
15 mansions right on the Sea of Cortez probably for  
16 about seven months. And then she would usually  
17 come back home when it got too hot to work down in  
18 the Baja.

19 Q. And I know this part is difficult, but  
20 I'd like to talk about -- have you tell the jury  
21 about how you learned that Kirby had passed away.

22 The -- the sweat lodge ceremony performed  
23 by Mr. Ray was on Thursday, October 8th. When did  
24 you first learn something had happened?

25 A. On Friday, October 9th, at 8:15 in the

1 morning, a trooper, a state trooper, came to my  
2 door and asked me if I knew Kirby Brown and then  
3 informed me that my daughter had died in a sweat  
4 lodge in Sedona, Arizona.

5 Q. Were you home alone?

6 A. No. George was at home.

7 Q. And what did you do?

8 A. I started screaming. And I invited the  
9 trooper in to give us more information, which he  
10 really didn't have any information. But he gave us  
11 the contact of the police to call here in Arizona,  
12 that they would give us more information.

13 So we made that phone call right away.  
14 And he -- I spoke with Detective Poling. And he  
15 confirmed yes, that Kirby had died. I think I had  
16 asked the time of death. He wasn't exactly sure,  
17 but knew it was the evening before.

18 And he couldn't give me much more  
19 information than that, other than that she had died  
20 in this sweat lodge. And then we began making  
21 phone calls to the kids and to family and friends  
22 and --

23 Q. Did you make arrangements for Kirby's  
24 body to be brought back to New York?

25 A. I -- I wasn't sure what we should do,

1 whether we should come out here to Arizona. I just  
2 didn't know what to do. And when we called the  
3 funeral parlor -- and the people are wonderful, and  
4 we know them well -- and they assured me that the  
5 best thing to do would be for them to make all the  
6 arrangements and have her body shipped back east.

7 But they knew that there would be an  
8 autopsy and that we would have to wait until the  
9 autopsy. So we had to wait to think about when we  
10 should make any kind of arrangements until the  
11 autopsy was completed.

12 Q. Did you have a memorial service or  
13 funeral for Kirby?

14 A. We did. We had a wake for her at the end  
15 of the next week, after she was returned to  
16 New York. And then -- then we had a beautiful mass  
17 of resurrection on the following Saturday. I  
18 believe the date is the 19th of October.

19 Q. Did you have clothing to dress Kirby in?

20 A. No. When Kirby was home this past year,  
21 we -- we made a big thing about the fact that she  
22 still had a lot of stuff in the house. She was  
23 setting up her own home in Mexico for the first  
24 time. That was her own space. Before that she was  
25 often in -- you know -- caretaking kinds of

1 situations. And I didn't have any of her clothing  
2 to dress her in.

3 And her beautiful friends Mika and Bobby,  
4 whom she'd been visiting with in Moab before she  
5 came to Sedona, had offered to go to Angel Valley  
6 to get her things.

7 On Saturday one of the first things we  
8 had done was to call Angel Valley to find out what  
9 was going to happen with her things. Her truck was  
10 there. I know there was clothing. There was  
11 other -- other stuff because she had plans to  
12 travel after this event. She was going to take a  
13 course in Venetian plaster up in Minnesota. And  
14 then from there she was visiting with some friends.  
15 And then she was going to be out in San Francisco  
16 doing a job in San Francisco. So she had paint in  
17 her truck and all kinds of stuff.

18 So I just didn't know what was going to  
19 happen with all her things. And Mika and Bobby  
20 left their home in Moab and went to Sedona to get  
21 Kirby's truck and her things. And I called Mika to  
22 ask her if she could look through her things and --  
23 and send something home that I could dress her in.

24 Q. And did she send something back to  
25 New York for you to dress Kirby in for the -- for

1 the funeral?

2 A. She did. She sent me a -- a box of some  
3 of Kirby's clothing and some of her jewelry and  
4 also her hair, which she had cut during the  
5 Spiritual Warrior retreat, which I was told at the  
6 time she cut it she dedicated to her mother.

7 So these things were in a box that we  
8 received, I think it was on Wednesday -- Wednesday  
9 or Thursday. Kirby's body was returned to us on  
10 Wednesday of the following week after the autopsy  
11 had been completed.

12 Q. And, again, I apologize, Mrs. Brown, for  
13 making you go through these memories. But was  
14 there a problem with the clothing fitting Kirby's  
15 body?

16 A. She -- the funeral director asked us to  
17 come to the funeral parlor that evening to see  
18 Kirby. And her body was bruised and had some burns  
19 and was very swollen. We brought clothing the next  
20 day to the funeral parlor but nothing fit her  
21 because her body was so swollen.

22 And they had to just wrap her in a wrap.  
23 And they said they needed to do that so any leaks  
24 from the incisions of the autopsy would absorb  
25 fluid. She didn't look like herself. Made sure

1 that they had gotten a wig that would simulate  
2 her -- her hair so that she would look like  
3 herself.

4 And on Thursday -- as I said, they  
5 couldn't dress her in her own outfit, her own  
6 clothing. And they just had a wrap on her. That  
7 evening they explained to me that they had to drain  
8 her body so that the next day she looked more like  
9 herself and she wasn't so swollen. And then we  
10 were able to put a different top on her that was  
11 hers, that was her own.

12 Q. For the mass you were able to put her in  
13 her own clothing?

14 A. Yes.

15 Q. You mentioned that you have Kirby's hair?

16 A. Uh-huh.

17 Q. Where -- where do you have her hair?

18 A. Her hair is on my dresser so I can see it  
19 every day.

20 Q. And is it in a ponytail?

21 A. Yeah. I guess she gathered it up and had  
22 it in a ponytail. And then she -- she cut it. I  
23 think she did that on Tuesday. I'm not -- I'm not  
24 sure.

25 Q. And you made the comment that you learned

1 she said, this one's for my mom?

2 A. Yes. Her roommate -- one of her  
3 roommates, Julie Minn, had stayed with Kirby's  
4 things. And I had -- had a chance to talk to her  
5 the -- the Monday after this had happened. And she  
6 told me that when she cut her hair, she said, this  
7 is for my mom.

8 Q. Would you tell the jury a little bit  
9 about Kirby's personality?

10 A. Kirby is my oldest child. She's -- she's  
11 fiercely independent. As her mother I can tell you  
12 she was never suggestible. She was always her own  
13 person. She was very physical. Everything she did  
14 was physical. She walked early. She -- she had a  
15 horse when she was 10. She mountain biked. She  
16 climbed. She repelled. She surfed when she --  
17 after she moved to the Baja.

18 She -- I would often describe Kirby as  
19 drunk on life because she loved life and she loved  
20 people. She had friends all over the place,  
21 everywhere she went. She gathered people together.  
22 She was a gatherer. And she knew how to entertain  
23 and make people feel comfortable and had a party  
24 really well. Kirby has played full on since she  
25 was born.



1 Q. You had mentioned to me that Kirby  
2 reached out and took care of other people. Can you  
3 tell the jury a little bit about that.

4 A. Yeah. She -- she was an incredible  
5 caretaker. Where she lived in the Baja, she was  
6 very conscious of helping an older woman who lived  
7 on -- on the hill knowing that she was on Social  
8 Security. She would watch out for her and make  
9 sure that she was taken care of during hurricane  
10 season and that she had the things that she needed.  
11 There were a couple of times that she had got folks  
12 together to kind of gather some money to take care  
13 of some of her needs.

14 I was there once when she got a whole  
15 group of people together to med-evac someone out of  
16 San Jose who had had a serious accident on the  
17 road. And she was really concerned that if the  
18 surgery had been done in Mexico that the man would  
19 never walk again.

20 And she orchestrated him to be med-evaced  
21 back to Canada. He attributes Kirby saving his  
22 life. And that was by gathering a whole group of  
23 people together to contribute financially and also  
24 to pressure the hospital into releasing him to  
25 leave to go back to Canada.

1 She had a little riding club on the hill  
2 where she lived because she rode horses there. And  
3 little kids would follow her. And she gathered a  
4 group of the parents together and offered to give  
5 their kids riding lessons. And then approached  
6 someone else to donate some of their property that  
7 she made sure was level -- level so that it would  
8 be safe for her to give the kids lessons. So she  
9 had this little riding group of about six or seven  
10 kids. They were 4 to maybe 7 or 8 years old that  
11 she gave lessons to. And that was just the way she  
12 was.

13 She would see a need, and she would take  
14 care of it. She -- she came home one -- one  
15 summer. She had this huge bag. I said, what are  
16 you doing?

17 She said, you know, mom. I've worked in  
18 all these stables all -- all around town, and they  
19 have all this tack, and they just throw it away.  
20 So I'm going to gather up what I can and bring it  
21 down to Mexico. Those kids don't have anything for  
22 their horse. And she just did stuff like that.

23 Q. And, Mrs. Brown, you have -- you said  
24 that Kirby was not suggestible. Through the course  
25 of the trial, you've come to hear what happened

1 inside the tent during Mr. Ray's events. Were you  
2 surprised to learn about --

3 A. I was horrified, horrified. Kirby was a  
4 great adventurer, but she was very conscious of  
5 safety. When we would be down in the Baja, we  
6 would not go up on the -- without a shade tent,  
7 without a cooler full of water. She was constantly  
8 talking about keeping hydrated.

9 When I learned about the -- the events of  
10 that week, I was horrified that she would not have  
11 realized that she was in potential danger. This  
12 has been one of the things that's been so difficult  
13 for us to understand. And all I -- all I can think  
14 is that her -- her free will choice was to believe  
15 James Ray.

16 Q. Have you been to an event put on by James  
17 Ray International?

18 A. Yes. In March of '09 Kirby and I went to  
19 the Harmonic Wealth two-day seminar in Jersey City,  
20 New Jersey.

21 Q. And do you know if that was the first  
22 event that Kirby went to?

23 A. Kirby had been to a free event in the  
24 Baja where at the time -- you know -- if you signed  
25 up immediately, you could go to Harmonic Wealth and

1 bring someone with you for free. So that was her  
2 first paid event that she paid for herself. And I  
3 was her free guest.

4 Q. When was that?

5 A. That was in March of '09.

6 Q. Of 2009. Do you know when the first time  
7 was that Kirby went to a free event put on by James  
8 Ray?

9 A. I believe it was in the fall of '08 when  
10 he was in the Baja.

11 Q. And is it your understanding that that's  
12 her first relationship with Mr. Ray or JRI?

13 A. Yes.

14 Q. After the event that you and Kirby  
15 attended, did Kirby sign up for another event?

16 A. While we were there in -- at the Harmonic  
17 Wealth two-day seminar, Kirby had decided that one  
18 of her intentions was to work on expanding her  
19 business. And she signed up for Quantum Leap,  
20 which was an event that was to take place in  
21 November of -- of 2009 in Las Vegas. And she  
22 signed up and paid for that event, which, I  
23 believe, it was about \$3,200.

24 Q. And --

25 A. And when we were -- also when we were

1 there, we decided that Harmonic Wealth would be a  
2 good experience for my husband, who has  
3 Parkinson's. And one of the challenges of  
4 Parkinson's is being conscious of depression. And  
5 we thought the messages of positive thinking and --  
6 and being focused on your positive intentions  
7 and -- and living impeccably and responsibly would  
8 be a great motivator for him. And we signed him up  
9 for Harmonic Wealth that was going to take place in  
10 May of 2009 in San Diego.

11 Q. Did George attend Harmonic Wealth in May  
12 of 2009?

13 A. Yes. Yes, he did. And Kirby went with  
14 him as well.

15 Q. Do you know when it was that Kirby signed  
16 up for Spiritual Warrior 2009?

17 A. It was when she was in San Diego with  
18 George at the Harmonic Wealth two-day seminar that  
19 she signed up for the event in Sedona. I think --  
20 yes. It was when she was there in San Diego.

21 Q. When you learned about what had happened  
22 to Kirby in the ensuing days, did you try to find  
23 out more about what had happened?

24 A. Yeah. I was pretty out of my mind trying  
25 to figure out what could have happened, what could

1 have gone wrong. And one of the things I did after  
2 calling all the family and friends, I -- I went  
3 back to my list from the Harmonic Wealth experience  
4 that I had had in March of '09 for the warrior --  
5 the people who were in my warrior group with Kirby  
6 who knew both us and whom we had conference calls  
7 with probably about seven times.

8 And I called those participants to let  
9 them know that Kirby was one of the people who died  
10 in Sedona and to find out if they knew anything  
11 else. And it turns out that one of those people  
12 was Paul Ronan, Sean Ronan's father. And Paul told  
13 me that --

14 MR. KELLY: Your Honor, objection to the  
15 hearsay.

16 THE COURT: Sustained.

17 Q. BY MS. POLK: And let me just remind you,  
18 Mrs. Brown, when you testify, you don't get to talk  
19 about what other people told you. But you can --  
20 you can talk about what you did and -- and what you  
21 might have --

22 A. I apologize.

23 Q. That's not a problem.

24 But you reached out to other  
25 participants --

1 A. Yes.

2 Q. -- and spoke to the father of one of the  
3 participants at the Spiritual Warrior 2009?

4 A. Yes.

5 Q. And that was Mr. Ronan, Paul -- Paul --  
6 or Sean Ronan's dad?

7 A. Yes. I then spoke to a few other  
8 participants that I kind of tracked down and -- to  
9 try to get information about what happened.

10 Q. Did you also talk to Beverly Bunn?

11 A. Beverly called us on the Tuesday night.

12 Q. Did you know Beverly before she called  
13 you?

14 A. No.

15 Q. And did Beverly Bunn actually come out to  
16 services for Kirby?

17 A. She did. She came to her funeral from  
18 Texas.

19 Q. This has obviously been difficult for  
20 you, Mrs. Brown. Can you talk a little bit about  
21 the emotional impact on you.

22 A. Well, I -- I think this has probably been  
23 the most difficult thing I've ever gone through in  
24 my life. I've seen the death of my parents and my  
25 in-laws. And I've been caretaker for both mothers.

1 And their deaths were difficult. But when someone  
2 young dies unexpectedly, you're forever mourning  
3 their lost future. That's been really hard.

4 Everything that happens is kind of  
5 bittersweet because we know Kirby should be there,  
6 and we know the event would have been that much  
7 bigger if Kirby had been there.

8 For the -- for me emotionally because of  
9 the -- the work that I do, the caretaking work that  
10 I do, it's been really difficult for me to remain  
11 present and available for my own clients because I  
12 take my responsibilities seriously.

13 Since this trial began, I've wanted to be  
14 here every day, and I couldn't because I had to  
15 take care of the people I was responsible to. I  
16 didn't want to abandon them because of this going  
17 on in my life. So that's been hard. It's been  
18 really hard to -- to kind of stay focused when  
19 my -- my heart and head have been here.

20 I think the other thing that's been  
21 difficult is that a lot of the work I do is --  
22 involves many other people with lots of schedules  
23 and overlapping schedules. And in the past year  
24 and a half, I've had to constantly rearrange  
25 scheduling that affected others, as well as myself,

1 in order to make sure that -- you know -- I was  
2 dealing with work responsibly.

3 So that's been very hard. That's been  
4 very hard. A lot of sleepless nights. A lot of  
5 tears.

6 Q. As part of the trial you've had to hear  
7 more details about Kirby's final two hours. How  
8 have you been able to handle that?

9 A. Well, my -- my husband and I made a  
10 decision that I wasn't going to be allowed to watch  
11 anything on the television. And I've watched very  
12 little. But every night would be wanting to get  
13 updates of testimony and what happened. And people  
14 who were out here representing us would be calling  
15 back home to let us know what happened.

16 I think what amazed me was, but didn't  
17 surprise me, was how many of the people who  
18 testified talked about Kirby. Because she was the  
19 kind of person who you didn't forget once you met  
20 her.

21 But hearing over and over again the  
22 horrific details of how she died and how she was  
23 left -- someone who was always taking care of  
24 others and had saved other people, to think that  
25 nobody saved her has been very, very difficult to

1 just hear over and over and over again.

2 Q. Would you talk a little bit about George,  
3 your husband, and how he has been impacted or dealt  
4 with this?

5 A. My husband is a remarkable man. And  
6 certainly when you have a condition like  
7 Parkinson's, something like this is going to  
8 aggravate that. But he's -- he's doing really  
9 well, and he has a good attitude and has been  
10 tremendously supportive. I don't know how we would  
11 have gotten through this if we didn't have each  
12 other to get through this.

13 Q. You mentioned a little bit the challenge  
14 of being -- I think you used the word "caregiver"  
15 yourself because of your profession. Has that been  
16 true for George as well?

17 A. Definitely. I think both of us, even in  
18 speaking with victims and -- and -- and trying to  
19 assess the level of trauma that people may have  
20 experienced has been very, very upsetting.

21 I think you have to make a judicious  
22 judgment about being appropriately available to  
23 help others that are struggling, you know. So it's  
24 putting aside your own pain and your own  
25 difficulties so that you can pay attention to the

1 people that you have to be there for. And that  
2 just takes a lot of energy to do that. I think  
3 George and I have both been able to do that, but  
4 it's been very difficult.

5 Q. Have there been days when you simply have  
6 not been able to work?

7 A. Yes. Yes. There have been. There have  
8 been. And I think because I work for an agency and  
9 I'm in a salaried position, there were many days  
10 that I really didn't have the choice. I had to  
11 be -- I had to be there. George had a little more  
12 freedom to change schedules, to -- you know -- to  
13 take fewer clients, that kind of thing. Because at  
14 this point he's in -- he's in private practice.

15 He had -- he had worked for the FDNY  
16 post-9/11 dealing with the firefighters for a  
17 number of years. But in more recent years he's  
18 been in private practice. So he had a little more  
19 freedom to see fewer clients.

20 Q. You mentioned that you actually teach  
21 anger management. Are you also dealing with anger?

22 A. Of course. Of course.

23 Q. And how about for George and your  
24 children?

25 A. Rage might be more appropriate.

1 Q. And is that something you still struggle  
2 with today?

3 A. Yes. Yes, it is. I think all of us have  
4 things in our life that appropriately get us very  
5 angry because they're unjust and they're unfair.  
6 And you have to figure out what you do with that,  
7 how -- how you choose to express yourself and  
8 whether or not you're going to allow that to rule  
9 your life. I will not allow my sadness or my anger  
10 to rule my life.

11 Q. What -- will you describe just briefly  
12 for the jury what the impact on Kirby's two sisters  
13 and brother has been.

14 A. Well, I think for Katie, first of all,  
15 she lived in the Baja as well. It's been really  
16 hard for her to be where she was with her sister  
17 every single day. Kirby was her doula for the  
18 birth of her first child and was with her at the  
19 birth and through those first couple of days after  
20 the emergency C-section. And she won't be there  
21 for the birth of the second child.

22 Katie has chosen to move. They're going  
23 to leave the Baja for many reasons, but certainly  
24 Kirby not being there is -- is one of the reasons  
25 why they're choosing to leave.

1 Q. Was Kirby also the godmother of Katie's  
2 baby?

3 A. She was her maid of honor and she was the  
4 godmother.

5 Q. They were very close?

6 A. Yes, they were. Even though Katie would  
7 tell you she was extremely bossy.

8 Q. And how about for Jean and for Bobby?

9 A. I think for Bobby, the fact that he and  
10 Kirby -- they did things together. They played  
11 golf together. They hiked together. Missing her  
12 energy, her enthusiasm, has a huge impact on him.

13 The fact that his children won't know  
14 this incredible aunt. How do you explain to a  
15 three and a half year old how their aunt died?  
16 This has been very hard, very hard for him and his  
17 wife.

18 And I think for Jean, Jean had -- our  
19 youngest daughter had lived in Thailand for a  
20 period of time. And she and Kirby traveled through  
21 Malaysia at one point. And Jean had said at that  
22 time she stopped being a little sister and  
23 became -- they became really good friends.

24 And she misses her sister tremendously  
25 and -- and found her life put on hold for a good

1 year and a half struggling with her own direction  
2 of what she wanted to do. And that's been  
3 something that I think she's just starting to kind  
4 of emerge from.

5 Q. Did you personally go down to Baja to  
6 help take down Kirby's house?

7 A. After Kirby died we made the decision to  
8 have her cremated because she's not an earthbound  
9 kind of person. And we put half of her ashes in  
10 the Atlantic, which was her first ocean; and we  
11 decided to bring the rest of her ashes down to the  
12 Baja in January to put them in her surf break.

13 And after a memorial in the Baja for all  
14 her friends who loved her and whom she loved, I  
15 then had to take apart her home that she hadn't  
16 really had a chance to even live in and try to  
17 figure out what to do with her things, just try to  
18 figure out what -- what we could bring back to  
19 New York, what had to be given away. So I was  
20 there for almost two weeks just completing that  
21 task.

22 Q. And going back to October 9, after you  
23 learned that Kirby had passed away, did JRI or  
24 Mr. Ray assist in any way in getting the body back  
25 to you?

1 A. No.

2 Q. Did you ever hear from Mr. Ray?

3 A. We had a brief phone conversation five  
4 days after Kirby died.

5 Q. And, again, I apologize for the  
6 difficulty of these questions. Did you learn that  
7 the -- that Kirby, essentially, was a Jane Doe at  
8 the hospital?

9 A. I think it -- yes. I'm not exactly sure  
10 who -- I don't know who -- who finally told the  
11 police her name was Kirby. I think it helped  
12 that -- with the last name like Brown, it really  
13 helped that she had a first name like Kirby so that  
14 the police in New York were able to track us down.  
15 They told me it took them a while to narrow down  
16 and figure out where she lived -- or where we  
17 lived.

18 Q. And, of course, you're aware that some  
19 time had passed from the time she was pronounced  
20 dead and the time that you learned on Friday  
21 morning?

22 A. Yes.

23 Q. You talked a little bit about the anger  
24 that you feel. Is that anger directed at Mr. Ray?

25 And that -- and let me just ask you, yes

1 or no. Is that anger at Mr. Ray?

2 A. Some at Mr. Ray. Yes.

3 Q. And is there also anger just that this  
4 could happen?

5 A. It's anger that this could happen.  
6 It's -- it's anger at the -- the court proceedings  
7 and our justice system.

8 Q. And has it been difficult having this  
9 case go through a court proceeding for you?

10 A. It's been extremely difficult.

11 MR. KELLY: Your Honor, objection. May we  
12 approach?

13 MS. POLK: Your Honor, I can move on.

14 MR. KELLY: I'd ask that question and answer  
15 be stricken.

16 THE COURT: It will be. So ordered.

17 Ms. Polk, you may continue.

18 Q. BY MS. POLK: Have you and your family  
19 formed an -- a -- have you been involved in an  
20 effort to educate others so that Kirby's death is  
21 not in vain?

22 A. I think one of the ways that you deal  
23 with overwhelming grief is that you try to take  
24 a -- a death that seems so horrific and -- and  
25 without explanation, to bring it to some kind of

1 positive purpose.

2 One of the things I've been concerned  
3 about is other people being harmed by trusting  
4 in -- in a situation that should not have been  
5 trusted. And so our children have created a  
6 not-for-profit organization called "SEEK," which is  
7 Self-help Empowerment through Education and  
8 Knowledge. SEEK safely. And our goal is to  
9 educate people about self-help, to help people ask  
10 maybe more probing questions before they follow a  
11 person or attend an event, red flags they should  
12 pay attention to, and research that's been  
13 established through academics across the country  
14 that have concerns about this unregulated industry.

15 Q. And by that you mean the self-help  
16 industry?

17 MR. KELLY: Your Honor, object to this line of  
18 questioning.

19 THE COURT: Sustained.

20 THE WITNESS: It's one of the ways we've  
21 chosen to deal with our grief.

22 MR. KELLY: There's no question.

23 THE COURT: You may continue, Ms. Polk.

24 MS. POLK: Thank you, Your Honor. I have no  
25 further questions.

1 THE COURT: Members of the jury, do you have  
2 questions for this witness? I don't think so.

3 Then Ms. Brown, you may step down. And I  
4 think you heard me tell Ms. Puckett, there's a part  
5 of the rule of exclusion that still applies to you  
6 about not talking about your testimony in the case  
7 with other witnesses until it's complete.

8 Okay.

9 THE WITNESS: Okay.

10 THE COURT: Thank you.

11 We're going to take the afternoon recess  
12 at this time. Ladies and gentlemen, please  
13 remember all aspects of the admonition. Remember  
14 you cannot start deliberating in any way. And  
15 please be reassembled at ten after. That's about  
16 20 minutes.

17 Thank you.

18 (Proceedings continued outside presence  
19 of jury.)

20 THE COURT: I'm sorry, Mr. Kelly. I did  
21 excuse the witness. But --

22 MR. KELLY: It's a rare court proceeding I go  
23 unnoticed. But it happened.

24 I do need, Judge, if I may have a moment  
25 on the record, to make a motion in regards to

1 Ms. Polk's comment on my client's right to exercise  
2 his constitutional opportunity to a jury trial. I  
3 objected the question, and the answer was stricken  
4 by the Court. I appreciate that.

5 But I would emphasize on the record that  
6 it was a highly improper line of questioning to  
7 direct a witness down a path regarding my client's  
8 constitutional right to this particular proceeding,  
9 and thus would move for a mistrial based on that.

10 THE COURT: Ms. Polk.

11 MS. POLK: And, Your Honor, that was not a  
12 comment on Mr. Ray's exercise of his right to a  
13 trial at all. The fact of the matter is when a  
14 victim's family has to go through a court  
15 proceeding, it is very, very difficult. And that's  
16 simply what she was commenting on is the impact on  
17 her, just this continuing impact of hearing  
18 testimony about the details of her daughter's  
19 death. It was not a comment in any way of  
20 Mr. Ray's exercise of his right to a trial.

21 THE COURT: I'm denying the motion for  
22 mistrial. I did order that particular answer  
23 stricken. And with the -- with the follow-up that  
24 was actually volunteered, Ms. Brown was,  
25 essentially, tying it in to the effect of -- on

1 her. But I did order it stricken, Mr. Kelly.

2 I'm denying the motion.

3 And I will ask if you have questions when  
4 we return. I will do that.

5 Thank you.

6 (Recess.)

7 (Proceedings continued in the presence of  
8 jury.)

9 THE COURT: The record will show the presence  
10 of Mr. Ray, the attorneys, the jury.

11 Mr. Kelly, do you have questions for  
12 Ms. Brown?

13 MR. KELLY: No. Thank you, Judge.

14 THE COURT: Thank you, Mr. Kelly.

15 Ms. Polk, you may continue.

16 MS. POLK: State calls Alyssa Gillespie,  
17 please.

18 THE COURT: Ma'am, if you please step to the  
19 front of the courtroom where the bailiff is  
20 directing you, and raise your right hand and be  
21 sworn by the clerk.

22 ALYSSA ANNE GILLESPIE,  
23 having been first duly sworn upon her oath to tell  
24 the truth, the whole truth, and nothing but the  
25 truth, testified as follows:

1 THE COURT: Be seated here to my right.  
 2 Would you please begin by stating and  
 3 spelling your full name.  
 4 THE WITNESS: My name is Alyssa Anne  
 5 Gillespie. Alyssa, A-l-y-s-s-a; Anne, A-n-n-e;  
 6 Gillespie, G-i-l-l-e-s-p-i-e.  
 7 THE COURT: Thank you.  
 8 Ms. Polk.  
 9 MS. POLK: Thank you.  
 10 DIRECT EXAMINATION  
 11 BY MS. POLK:  
 12 Q. Good afternoon, Alyssa. Can you tell the  
 13 jury, first of all, what your relationship is to  
 14 James Shore.  
 15 A. James Shore was my husband, my partner,  
 16 my best friend for 13 years.  
 17 Q. Where do you live now?  
 18 A. I live in Milwaukee, Wisconsin.  
 19 Q. And how long did you and James live there  
 20 before he passed away?  
 21 A. Before James passed away, we lived there  
 22 for five years. Previous to that we lived in New  
 23 Mexico, in Albuquerque.  
 24 Q. And tell the jury how you met in  
 25 Albuquerque.

1 A. I met James at a cafe in Albuquerque when  
 2 I was 20. And I was studying to go to massage  
 3 school, and we were discussing my anatomy and  
 4 physiology. We had a brief conversation. And --  
 5 and then several months later I met him again at a  
 6 mutual friend's party.  
 7 Q. When did you and James get married?  
 8 A. When I was 22.  
 9 Q. And where did you get married?  
 10 A. Actually in New Mexico.  
 11 Q. And tell the jury what you did for your  
 12 wedding -- for your ceremony.  
 13 A. We actually had a ceremony just with the  
 14 two of us. We were camping, and we were at the  
 15 Gila Wilderness, and we were common-law married.  
 16 We married each other.  
 17 Q. Would you tell the jury how old you are  
 18 now.  
 19 A. I'm 36 -- or 37. I think I'm 37. I just  
 20 turned 37.  
 21 Q. And when James passed away, how old was  
 22 he?  
 23 A. He was 40.  
 24 Q. You mentioned massage therapy. Is that  
 25 your occupation?

1 A. Yes.  
 2 Q. And tell the jury what you do.  
 3 A. Well, I'm a licensed massage therapist.  
 4 But I actually, after getting out of massage  
 5 school, continued on with continuing education  
 6 courses. And I went to a two-year homeopathic  
 7 college. And I studies what's called core  
 8 synchronism, which is a system of bodywork similar  
 9 to advanced craniosacral polarity therapy, shiatsu  
 10 and other therapies.  
 11 Q. Where did you grow up? Where did you  
 12 live before you were living in Albuquerque.  
 13 A. I grew up in Park Ridge, Illinois, which  
 14 is a suburb outside of Chicago.  
 15 Q. And how about James. Where did he grow  
 16 up?  
 17 A. James grew up in Milwaukee, Wisconsin.  
 18 Q. Can you tell the jury whether James went  
 19 to college.  
 20 A. Yes. He did go to college.  
 21 Q. Did he graduate from college?  
 22 A. He did graduate.  
 23 Q. Will you tell the jury what college he  
 24 graduated from and what his degree was.  
 25 A. He graduated from the University of New

1 Mexico with a degree in archeology.  
 2 Q. Will you just tell the jury a little bit  
 3 about James's interests.  
 4 A. James was -- James was interested in the  
 5 world. He was interested in so many things all the  
 6 time that nobody I knew could keep up with him and  
 7 his interests. I mean, he was really an incredibly  
 8 intelligent man. And he had -- I'm sorry.  
 9 Do you want me to --  
 10 Q. Well, what was he -- what was he doing  
 11 for a living before he --  
 12 A. Okay. Before he -- before he passed  
 13 away, he was doing internet marketing, which was --  
 14 obviously doesn't have anything to do with  
 15 archeology. He got very into computers.  
 16 Q. Was he good at computers?  
 17 A. He was very good at computers.  
 18 Q. In fact, had he started a computer  
 19 business with a friend?  
 20 A. Right.  
 21 Q. Who -- what was the name of the friend?  
 22 A. His friend's name is Matt Collins. He  
 23 was a life -- lifelong childhood friend. And they  
 24 had started the internet marketing company.  
 25 Q. And, Alyssa, can I get you to pull the

1 mic a little bit closer?

2 **A. Sure.**

3 **Q.** Thank you.

4 Where had James and Matt started that  
5 business? Was that in Milwaukee?

6 **A. In Milwaukee.**

7 **Q.** And was James also otherwise employed?  
8 Was he doing contracts for other things?

9 **A. Yes. Uh-huh.**

10 **Q.** Tell the jury a little bit about that,  
11 the various businesses that James had been involved  
12 in.

13 **A. Well, James -- we moved from Albuquerque**  
14 **to Milwaukee because James was given a job**  
15 **opportunity at a company called "Know Your Biz,"**  
16 **which was an internet marketing company. And his**  
17 **friend Matt had worked there. And he worked with**  
18 **Matt at Know Your Biz for several years.**

19 **And while they were working together,**  
20 **they were also simultaneously creating their own**  
21 **company and writing books and things like that**  
22 **about internet marketing. So then they branched**  
23 **off from Know Your Biz and started their own**  
24 **company.**

25 **Q.** The jury heard some testimony about how

1 James -- during the week of the Spiritual  
2 Warrior 2009 event, how he was actually up at the  
3 gift shop on the internet. Did he have some  
4 business proposals that were pending when he  
5 attended the Spiritual Warrior event?

6 **A. Yes, he did.**

7 **Q.** How many children do you and James have?

8 **A. James and I have three children.**

9 **Q.** And how old are they?

10 **A. Right now they are 13 -- I -- I have two**  
11 **girls and a son. My oldest daughter is 13, my**  
12 **middle daughter is 11, and my son is 9. They all**  
13 **just had birthdays. They were 11, 9, and 7 when**  
14 **James passed away.**

15 **Q.** Where were the three children born?

16 **A. They were all born in Albuquerque, New**  
17 **Mexico.**

18 MR. KELLY: May we approach, Judge, briefly?

19 THE COURT: Yes, you may.

20 (Sidebar conference.)

21 MR. KELLY: Judge, I would object to the  
22 admission of 1109, 1117, 1100, and 1098 for the  
23 same reasons I explained earlier in regards to the  
24 first witness's testimony. The issue here -- only  
25 possible issue is an aggravating circumstance. And

1 clearly by these photographs showing pictures of  
2 the witness's children and her husband in a photo  
3 is designed to the -- to appeal to the passion of  
4 the jury and has no relevance in regards to the  
5 impact of his death on her emotional state.

6 MS. POLK: Your Honor, the aggravating factor  
7 applies to the emotional harm to the immediate  
8 family. And that would include these three  
9 children. It would include James Shore's mother as  
10 well as his sister. And I have photographs of them  
11 as well. This witness is going to testify about  
12 each of the children and what the emotional harm  
13 has been.

14 MR. KELLY: And, Judge, just for the record,  
15 there is a continual problem with witnesses  
16 testifying as to the state of mind of other  
17 persons, such as their child, their brother, their  
18 mothers, their father, et cetera, that we've heard  
19 this afternoon. And I objected to that.

20 These witnesses are only -- the only  
21 foundation that can be laid is how the death of  
22 Mr. Shore affected the witness personally. She can  
23 testify as to observations, personal knowledge, the  
24 state of mind of others.

25 I'm sorry. Just for the record, we've

1 heard a great deal of hearsay information and  
2 purported state of mind of other persons not on the  
3 witness stand. I believe I made my record.

4 MS. POLK: Your Honor, this witness is going  
5 to testify what she has observed in her children.  
6 This is her personal observation about these  
7 children and James Shore's mother.

8 THE COURT: Mr. Kelly?

9 MR. KELLY: I have nothing further.

10 THE COURT: There are actually observations of  
11 an emotional condition at the time without hearsay.  
12 But confined to those observations of emotional  
13 reactions, I think that's permissible.

14 With regard to the photographs, it is  
15 about emotional harm. They're relevant, and I'm  
16 into this 403 situation. There is relevance if  
17 you're talking about people who are having the  
18 reaction to show them. It's a 403 situation. But  
19 if they're not duplicated, I'm going to permit  
20 these photographs. They will be admitted.

21 Mr. Kelly.

22 MR. KELLY: Judge, I would ask that my  
23 objection be preserved, and I would not object to  
24 the admission of the numbered photographs in front  
25 of the jury.

1 THE COURT: If they're offered, I'm going to  
2 admit them. The objection is on the record.  
3 (End of sidebar conference.)  
4 THE COURT: Ms. Polk.  
5 MS. POLK: Thank you, Your Honor.  
6 Q. Alyssa, I'm going to show you exhibits  
7 1101, 1117, 1100, and 1098. Do you recognize the  
8 people in all of these photographs?

9 A. Yes.

10 Q. And they are family members, your  
11 children?

12 A. Yes.

13 Q. As well as yourself with James?

14 A. Yes.

15 MS. POLK: Your Honor, I move for the  
16 admission of these exhibits.

17 THE COURT: And the numbers, please?

18 MS. POLK: 1101, 1098, 1100, and 1117.

19 THE COURT: Those exhibits are admitted.  
20 (Exhibits 1101, 1098, 1100, and 1117  
21 admitted.)

22 Q. BY MS. POLK: I'm going to put up on the  
23 overhead Exhibit 1117. Will you tell us who this  
24 is.

25 A. This is my daughter Inaya Shore.

1 Q. Is she your oldest?

2 A. Yes, she is.

3 Q. And how old is she today?

4 A. Now she's 13, and she doesn't look like  
5 that.

6 Q. How old is she in this?

7 A. It's only -- I think that picture is  
8 pretty recent, but she looks really different.

9 Q. Because she's 13 and --

10 A. 13. She's 13.

11 Q. And how old was she when James passed?

12 A. She was 11 when James passed, 11 1/2.

13 Q. I'm going to put up on the overhead  
14 Exhibit 1100. And will you tell the jury who this  
15 is.

16 A. That's my daughter Amrita Shore, who is  
17 currently 11 and looks exactly like that still.

18 Q. And how old was she when she lost her  
19 dad?

20 A. She was nine and a half.

21 Q. And I'm going to put up on the overhead  
22 Exhibit 1101. And will you tell the jury who this  
23 is.

24 A. That's my son, Darshan Shore. He's nine.  
25 And he was seven and a half.

1 Q. I'm going put up on the overhead 1098.

2 Can you tell us who this is.

3 A. That's James and I. And that was taken  
4 at my parents' 30th wedding anniversary. And they  
5 just had their 40th wedding anniversary. So that  
6 was taken ten years ago.

7 Q. That's ten years old?

8 A. Yes.

9 Q. Will you tell the jury what kind of  
10 father James was.

11 A. James was -- he was amazing father. I  
12 mean, that's one of -- I mean, there's so many  
13 things anybody could say about James. But one of  
14 the things about James is that he was an  
15 incredible, incredible father. And he loved his  
16 children. And that's all he ever wanted to do was  
17 hang out with his kids and play with his kids.  
18 And -- that's really what -- that's what James and  
19 I did.

20 Once we had our daughter Inaya and we  
21 realized how much we loved being parents, and we  
22 had two more children. And he was very present --  
23 a very present father and he would read to the  
24 children every night and put them to bed reading  
25 them all sorts of books and things that I thought

1 were not always age appropriate, like Lord of the  
2 Rings.

3 You know -- anyways, he read to the  
4 children every single night. And my daughter Inaya  
5 who is -- still reads a huge amount of novels, has  
6 these stacks and stacks of books that her and her  
7 dad read together. And they read together up until  
8 he died. She was 11 1/2. And they laid in about  
9 bed every single night and read together every  
10 single night.

11 Q. Was he a hands-on dad in terms of the  
12 early years of the children, changing diapers --

13 A. He was a very hands-on dad. Actually, he  
14 did -- when I worked part time, James did all the  
15 child care. So we never had a baby-sitter. So  
16 James would watch the children when I worked, and I  
17 would watch the children while he worked.

18 He changed all the diapers and get up  
19 with them in the middle of the night and bounce  
20 them around the house and let me sleep. He was an  
21 extremely hands-on father.

22 Q. I would imagine with three kids that  
23 before James passed away they were involved in a  
24 lot of activities. Was he present for those  
25 activities?



1 **A. Yes. Yes. He was a great volunteer dad**  
 2 **and drove the girls to all their softball games.**  
 3 **And he would often take half days off work and**  
 4 **things like that to drive on field trips if the**  
 5 **class was going to the zoo or if they had a**  
 6 **parent-teacher conference.**

7 **He came to every -- everything the**  
 8 **children did, whether it was a little class play or**  
 9 **a presentation or a parent-teacher conference. He**  
 10 **was very involved in their lives. Very involved.**

11 **Q. Were birthdays and --**

12 **A. Yes.**

13 **Q. -- holidays a big deal?**

14 **A. Birthdays -- birthdays we always had**  
 15 **really big, fun birthday parties for the kids. And**  
 16 **he would -- he was very involved, whether it was**  
 17 **making the pinata or hanging up the pinata or**  
 18 **blowing up the balloons or water balloon fights.**

19 **MR. KELLY: Judge, I would simply state --**  
 20 **renew my objection to 1130 and 1131.**

21 **THE COURT: Ms. Polk, can I see the exhibits?**

22 **Exhibit -- these are being offered?**

23 **MS. POLK: Yes, Your Honor.**

24 **THE COURT: Exhibits 1130 and 1131 are**  
 25 **admitted.**

1 **(Exhibits 1130 and 1131 admitted.)**

2 **Q. BY MS. POLK: I'm going to put up on the**  
 3 **overhead 1130 and ask you to tell the jury who is**  
 4 **in this photograph.**

5 **A. This is -- in the middle this is Jane**  
 6 **Griff, James's mother, and her husband, Tom Griff,**  
 7 **and then our three children, Inaya, Amrita, and**  
 8 **Darshan.**

9 **Q. I want you to tell the jury a few things**  
 10 **about James Shore's immediate family. Jane is his**  
 11 **mother?**

12 **A. Yes.**

13 **Q. And, in fact, has she been here for parts**  
 14 **of this trial?**

15 **A. She has been here, yes, as often as she's**  
 16 **been able to be.**

17 **Q. Tell the jury how many children Jane had**  
 18 **with James's father.**

19 **A. Jane had four children. Her son Rick --**  
 20 **Richard Shore, Virginia Shore, James Shore, and**  
 21 **Christopher Shore. And Rick passed away also.**  
 22 **Richard Shore passed away, I believe it was, 15**  
 23 **years ago.**

24 **Q. So your husband, James, had two brothers**  
 25 **and a sister?**

1 **A. Yes.**

2 **Q. And one of those brothers passed away?**

3 **A. Yes.**

4 **Q. Were you alive at -- were you married to**  
 5 **James at that time?**

6 **A. No. No.**

7 **Q. Where does Jane live?**

8 **A. Jane lives in Milwaukee, Wisconsin.**

9 **Q. And at some point did Jane divorce**  
 10 **James's father?**

11 **A. Yes. She did divorce.**

12 **Q. And she remarried Tom Griff?**

13 **A. Tom Griff. Right.**

14 **Q. Did James Shore's father pass away at**  
 15 **some time?**

16 **A. James Shore's father passed away also,**  
 17 **which was very hard on Jane -- Jane, even though**  
 18 **they were divorced. She had been married to him**  
 19 **for 30 years and they also had a good relationship**  
 20 **and were friends.**

21 **Q. And then I'm going to put up on the**  
 22 **overhead Exhibit 1133 and ask you to tell the jury**  
 23 **who's in this photograph.**

24 **A. Okay. Starting on the far right, that's**  
 25 **Virginia Shore, James's sister, and her husband,**

1 **Tom Carter, and their son Ricky -- they actually**  
 2 **have four children. They have an older daughter,**  
 3 **Evie, who's not in the picture. And they have**  
 4 **twins who were born after Ricky. And then there's**  
 5 **James and I and my three children. That was taken**  
 6 **in Santa Fe.**

7 **Q. And this, then, is James's sister?**

8 **A. James's sister.**

9 **Q. And has his sister also been out here for**  
 10 **part of the trial?**

11 **A. She has been here, I believe, two or**  
 12 **three times.**

13 **Q. Are your children close to Jane, James's**  
 14 **mother?**

15 **A. Yes, they are.**

16 **Q. And she lives in Milwaukee where you**  
 17 **live?**

18 **A. Right.**

19 **Q. And, in fact, who are your children with**  
 20 **while you're out here testifying?**

21 **A. They're with Jane, Nana. They call her**  
 22 **Nana.**

23 **Q. I want to ask you a little bit about how**  
 24 **James, your husband, ended up going to the**  
 25 **Spiritual Warrior 2009 event.**

1 First of all, have you ever been to an  
2 event put on by James Ray International?

3 **A. Yes.**

4 **Q. And when was that?**

5 **A. I attended a free event which James Ray**  
6 **hosted in Chicago. I went there with my**  
7 **sister-in-law. And we went to the free event. And**  
8 **during the free event you're given an opportunity**  
9 **at the end to -- if you make a decision right**  
10 **away -- I can't remember -- remember all of the**  
11 **details. But it's like a buy one, get one. Or if**  
12 **you and a friend come together, you can come for**  
13 **cheaper.**

14 **And it seemed something that James and I**  
15 **would have fun doing together for a weekend. I was**  
16 **at the back table of the event talking to the**  
17 **people there, the volunteers who were there**  
18 **promoting the event, talking to them about what it**  
19 **costs and things like that and realized that it was**  
20 **really expensive for James and I.**

21 **And as we were talking about it, somebody**  
22 **tapped me on the shoulder and said that I had been**  
23 **gifted a free ticket to Harmonic Wealth and that**  
24 **James and I could come together if we paid for just**  
25 **one participant. And that was how we ended up at**

1 **the Harmonic Wealth weekend.**

2 **Q. Did you, in fact, purchase something that**  
3 **day?**

4 **A. Yes, I did. But I only purchased one**  
5 **because we had been gifted one.**

6 **Q. Did you and James then attend the**  
7 **Harmonic Wealth?**

8 **A. We did.**

9 **Q. When was that?**

10 **A. I believe -- it was in Chicago. And I**  
11 **believe it was in June.**

12 **Q. Of what year?**

13 **A. '09.**

14 **Q. Of 2009?**

15 **A. Yes.**

16 **Q. How many days was that event?**

17 **A. Two days.**

18 **Q. And you and James were there together?**

19 **A. Right.**

20 **Q. And at that event did you purchase**  
21 **another event?**

22 **A. So while we were at Harmonic Wealth,**  
23 **which is a two-day event, during the course of the**  
24 **event James Ray was talking about how the next**  
25 **following weekend they were having another event in**

1 **San Diego called "Creating Absolute Wealth" and**  
2 **that it was very unusual to have two events back to**  
3 **back.**

4 **But one of the things they talked about a**  
5 **lot was keep the -- keep the goggles on. Once you**  
6 **get involved in something and you're making**  
7 **positive changes in your life that you should keep**  
8 **propelling yourself forward.**

9 **Because the events were back to back, if**  
10 **anybody in the room chose to attend the second**  
11 **weekend, that they would be given a very**  
12 **significant discount. And James and I chose to do**  
13 **that.**

14 **Q. Did you attend that next event?**

15 **A. We did.**

16 **Q. And where was that?**

17 **A. In San Diego.**

18 **Q. And when was that?**

19 **A. Well, like I said, I don't have really**  
20 **clear dates. But if the first one was in June, it**  
21 **was a week -- it was -- I mean, you could find that**  
22 **in the records of whenever Creating Absolute Wealth**  
23 **in San Diego. It might have been in July.**

24 **Q. And the two of you went --**

25 **A. They were back to back. They were**

1 **weekends back to back.**

2 **Q. The two of you went together?**

3 **A. Right.**

4 **Q. And then did you or James purchase**  
5 **another event?**

6 **A. And so -- yes. At Creating Absolute**  
7 **Wealth, through the course of Creating Absolute**  
8 **Wealth, which is a three-day event. They're very,**  
9 **very long. They start early in the morning and go**  
10 **very, very late into the evening.**

11 **Throughout the course of the event,**  
12 **you're talked to about all the other events. I**  
13 **believe it's called the "pyramid of power" or --**  
14 **there's a sequence of events. So throughout the**  
15 **event you were talked to all the time about the**  
16 **other events that are coming up and that if you**  
17 **choose to purchase a package right there and right**  
18 **then, you're given a discount for the events.**

19 **So James decided that he -- actually, he**  
20 **decided that there were several of the events that**  
21 **would be good for me to go to that would help me**  
22 **get my act together a little bit. So he purchased**  
23 **a package of three events. Two of them were for**  
24 **me, which would have happened after the sweat**  
25 **lodge. One was Spiritual Warrior.**

1 **When we left San Diego, he kind of**  
 2 **snapped out of it because, first of all, we didn't**  
 3 **have enough money in the bank account to cover the**  
 4 **purchase of what he had just done, so he went home**  
 5 **and canceled his check. And my understanding of**  
 6 **it --**

7 MR. KELLY: Your Honor, I'm going to object.  
 8 It's nonresponsive.

9 THE COURT: Sustained.

10 Q. BY MS. POLK: Let me just ask you this,  
 11 Alyssa: When you learned -- when did you learn  
 12 that your husband was going to the Spiritual  
 13 Warrior 2009 event?

14 A. **About three days before it happened.**

15 Q. And prior to that time, was it your  
 16 belief that he had canceled?

17 A. **Yes. And it was his belief that he had**  
 18 **canceled.**

19 MR. KELLY: Your Honor, I object.

20 THE COURT: Counsel, see you at the bench,  
 21 please.

22 (Sidebar conference.)

23 THE COURT: Mr. Kelly, go ahead with the  
 24 grounds.

25 MR. KELLY: First of all, lack of foundation

1 as to what Mr. Shore's belief may have been.  
 2 Secondly, this was the subject of a pretrial motion  
 3 with regard to the refund policy. And again we're  
 4 treading on some thin ice, I would submit, Judge.  
 5 Objecting during this emotional testimony in front  
 6 of the jury puts me in a very difficult position.  
 7 And this witness has a tendency to provide a  
 8 narrative response to a very simple question.

9 THE COURT: Ms. Polk.

10 MS. POLK: Your Honor, the emotional harm this  
 11 witness has suffered is amplified by the fact that  
 12 she and her husband believed that they had canceled  
 13 the event.

14 What happened was after they left  
 15 San Diego, they went home and they said, what have  
 16 we done? We can't afford this. And she -- they  
 17 attempted to cancel, and it was her belief it was  
 18 canceled.

19 Three days before the event, he got calls  
 20 from JRI, essentially, telling him that he could  
 21 not cancel. And so he did go to Spiritual  
 22 Warrior 2009. But he did not plan to go. The  
 23 family -- nobody was planning on it. His business  
 24 partner was not planning on it. Nobody knew he was  
 25 going.

1 That's part of the emotional harm is that  
 2 not only has she lost her husband -- it's not like  
 3 losing your husband because he was doing something  
 4 that he loved, like surfing. He was at an event  
 5 only because he could not get his money back. And  
 6 that is -- that exacerbates the emotional harm that  
 7 she lost him to an event he wasn't supposed to be  
 8 in the first place.

9 THE COURT: Ms. Polk, if the questions are  
 10 posed as to what emotional harm and how the death  
 11 brought that about, those aspects, that can be  
 12 asked. But this detailed narrative, it does sound  
 13 like kind of going into business practices. I  
 14 believe it is relevant to get there. It really  
 15 ought to be to does focused on her emotional harm  
 16 and what's behind it.

17 Mr. Kelly.

18 MR. KELLY: Judge, I need to make an offer of  
 19 proof since we're at a private conversation. It's  
 20 my understanding that this witness received  
 21 \$2.3 million in a settlement from JRI and James  
 22 Ray. And earlier today we heard an avowal from the  
 23 State of Arizona that that sum of money was only  
 24 sufficient, given their standard of living, to  
 25 support this witness for an proximate four-year

1 time period.

2 And the reason that's relevant in this  
 3 inquiry is that that imputes a significant gross  
 4 income upon which a comparison to \$10,000 could be  
 5 made by the jury. So although \$10,000 may be a lot  
 6 to one of the prospective jurors -- excuse me -- to  
 7 one of the seated jurors, if with the  
 8 representation that was made prior to her  
 9 testimony, given her standard of living that  
 10 2.3 million was only enough to carry her for four  
 11 years, this entire line of questioning in regards  
 12 to how somehow financial harm is hooked into  
 13 emotional harm, Judge, I believe is irrelevant.

14 MS. POLK: Your Honor, I'm not arguing  
 15 financial harm at all. What I'm arguing is that  
 16 she lost her husband to an event that he shouldn't  
 17 even have been at in the first place. It's not the  
 18 loss of the \$10,000 or the \$15,000 package. It's  
 19 that they didn't want to go. They wanted to get  
 20 out of it. They didn't want to go, and he goes  
 21 because he figures, well, I'm going to lose my  
 22 investment, and he dies. And so that's emotional  
 23 harm to her. It's not financial.

24 I did want to comment on the settlement.  
 25 I didn't know the figure until Mr. Kelly just gave

1 it to me. But what the witness has explained to me  
2 is that from their settlement amount, first of all,  
3 a third went off to the attorneys or a chunk went  
4 off the top to the attorneys, that it is settlement  
5 for her three children as well.

6 Through the probate court a large  
7 percentage of that money went into trust funds for  
8 those children for when they turn 18 or 25 or  
9 whatever it is and that a much smaller portion was  
10 left to her to provide for the children and herself  
11 as they grow older.

12 I'm not going there. I just wanted to  
13 address the reference to the 2.3 million.

14 THE COURT: Mr. Kelly, with regard -- did you  
15 have something further?

16 MR. KELLY: I did, Judge. A related problem  
17 is allowing this witness to testify as to what is  
18 in the mind of Mr. Shore. With all due respect to  
19 the witness, remind the Court of the testimony  
20 about Mr. Shore and Ms. Brown, and maybe he wanted  
21 to go.

22 So I would submit that this line of  
23 questioning is not proper simply based on lack of  
24 foundation, that it would be speculative for his  
25 wife to testify as to whether or not he wanted to

1 go to Spiritual Warrior 2009.

2 THE COURT: What's relevant is the emotional  
3 impact on her, whatever it may be, or evidence to  
4 that. So questions going to her emotional impact,  
5 what she believed, and how that affected her is  
6 relevant, Ms. Polk.

7 Going through this long narrative, it's  
8 hard for me to track what the relevance is. If  
9 it's related to the emotional impact on her -- and  
10 there can be hearsay problems in this phase as well  
11 too.

12 But if it's her understanding because  
13 it's her feelings. That's what the emotional  
14 impact comes from, her beliefs, her feelings,  
15 whether they're accurate or not.

16 So it's relevant testimony. But some of  
17 the background is just not going into such detail  
18 with the business. And also it's into hearsay with  
19 regard to James Shore's statements.

20 MS. POLK: Your Honor, I'll move on and then  
21 perhaps come back to it in another way towards the  
22 end. I won't continue with this.

23 THE COURT: Thank you.

24 (End of sidebar conference.)

25 THE COURT: You may continue, Counsel.

1 Q. BY MS. POLK: When did you learn, Alyssa,  
2 that James was going to the Spiritual Warrior 2009  
3 event?

4 A. Three days before he went.

5 Q. And were there some accommodations --  
6 last-minute accommodations you had to make?

7 A. Yes.

8 Q. Such as what?

9 A. We got him a last-minute plane ticket.  
10 And while he was flying on the plane, I called  
11 Angel Valley and made him -- booked his hotel  
12 reservation at Angel Valley.

13 Q. Would you describe for the jury the  
14 health of James.

15 A. I would say James was not in the best of  
16 health at the time he went to Spiritual Warrior,  
17 which is why we chose to go. Because James had  
18 been an extremely healthy and very health-conscious  
19 man in his life, and he had studied alternative  
20 medicine and knew a lot about how to live and be  
21 healthy.

22 But when we moved to Milwaukee --  
23 anyways, Milwaukee is Milwaukee. They like beer  
24 and brats and football. And he started his  
25 computer company with his friend, and he went from

1 being a very active person to sitting in front of a  
2 desk, in front of a computer, for probably 60, 70  
3 hours a week. And he gained a lot of weight.

4 So, anyway, he was really excited to get  
5 his health back and start exercising and eating  
6 better. And that's one of the things that's really  
7 promoted as something you'll get out of the  
8 weekend, is to learn about health and how to live a  
9 healthy lifestyle.

10 Q. Was your husband a smoker?

11 A. Yes. James was a smoker.

12 Q. Was that one of the things he wanted to  
13 kick?

14 A. Yes. Yes. He really wanted to quit  
15 smoking. He knew that he could quit smoking.

16 Q. When was the last time you saw your  
17 husband?

18 A. The last time I saw him would have been  
19 the morning -- I don't know without my notebook. I  
20 don't have dates. If you knew when Spiritual  
21 Warrior started?

22 Q. How about Sunday?

23 A. Did it start on Sunday? It would have  
24 been Friday morning.

25 Q. And did -- how did -- did you take him to

1 the airport?

2 **A. No. Actually, he drove himself to the**  
3 **airport.**

4 **Q. And left a vehicle there?**

5 **A. Yes. Parked in the --**

6 **Q. When is the last time you heard from your**  
7 **husband?**

8 **A. Well, about three or four days into the**  
9 **retreat -- maybe two days into the retreat he sent**  
10 **me a text saying that they were taking a vow of**  
11 **silence and so that he couldn't talk anymore. And**  
12 **because James and I talked all the time even when**  
13 **he wasn't supposed to be.**

14 **I mean, we were in communication during**  
15 **the retreat. I don't know if we were supposed to**  
16 **be or not. But then he sent me a text saying that**  
17 **they were taking a vow of silence and that his**  
18 **phone would be off and that he was flying in on**  
19 **Friday evening, arriving back home in Milwaukee**  
20 **around 10:00 o'clock, and he would call me Friday,**  
21 **make the arrangements to pick him up at the**  
22 **airport.**

23 **Q. Now, was his vehicle at the airport?**

24 **A. His vehicle was not at the airport, which**  
25 **is what I -- I know a second ago I just said he**

1 **parked it there. I'm trying to remember all the --**  
2 **I remember he dropped the children off at school.**  
3 **I know that for a fact.**

4 **Q. On -- on Friday before the seminar?**

5 **A. Yeah. Because my kids will never ever**  
6 **forget it. They will never -- my daughter had a**  
7 **friend sleep over the night before because her**  
8 **parents had to go somewhere unexpectedly. And**  
9 **because her friend was with her, she didn't give**  
10 **her dad a hug and a kiss because like she normally**  
11 **would be, she's -- you know -- 11 years old and too**  
12 **cool to give her dad a hug and a kiss. And she**  
13 **talks about it all the time that she didn't get to**  
14 **give him a hug and a kiss because her friend was**  
15 **with us.**

16 **But, anyways, I know he dropped them off**  
17 **at school. And I don't know how he got to the**  
18 **airport. We live five minutes from the airport. I**  
19 **was at work. So --**

20 **Q. Were you going to pick up James when he**  
21 **flew back --**

22 **A. Yes.**

23 **Q. -- from Arizona?**

24 **A. Yes.**

25 **Q. And what were the arrangements? What**

1 **would trigger your going to the airport to get him?**

2 **A. I was going to talk to him on Friday**  
3 **after the retreat was over and they were allowed to**  
4 **turn their phones back on. So I knew he was coming**  
5 **in late Friday night, somewhere around**  
6 **10:00 o'clock, and that he was going to get in**  
7 **touch with me Friday.**

8 **Q. What happened Friday during the day?**  
9 **Were you waiting to hear from him?**

10 **A. I waited a little bit and then I just**  
11 **started texting him saying, how was it? How are**  
12 **you doing? Was it fun? You know. Then I didn't**  
13 **hear from him, and then I called and then I texted**  
14 **again. And then I just thought maybe he lost his**  
15 **phone in the desert or ran out of batteries or --**  
16 **you know -- if he had turned his phone off. I**  
17 **didn't know what happened.**

18 **But I -- at that point I thought**  
19 **something is going on. He doesn't have his phone**  
20 **on. And so because we live so close to the**  
21 **airport, I figured he just would fly home and come**  
22 **home, take a cab home.**

23 **Q. And the sweat lodge was on October 8th.**

24 **A. 8th. Thursday.**

25 **Q. And so now we're talking about Friday,**

1 **October 9?**

2 **A. Right.**

3 **Q. And now it's into the evening hours, and**  
4 **you still hadn't heard from anybody?**

5 **A. I hadn't heard from anybody. And I**  
6 **hadn't heard from him, and it was -- I started**  
7 **feeling very strange around 3:00 o'clock. I mean,**  
8 **just -- you just have that feeling. You just have**  
9 **that -- you know -- when you've spent so many years**  
10 **with somebody and you're so connected with**  
11 **somebody, I was feeling really -- very, very, very**  
12 **strange.**

13 **And I was trying not to think that**  
14 **something had happened just because I couldn't get**  
15 **ahold of him, but I was pretty sick about it.**

16 **Q. Where were your children that Friday**  
17 **night?**

18 **A. The Friday night after school both my**  
19 **daughters had been invited to sleep overs at**  
20 **separate friend's houses, and my son was home with**  
21 **me. And I had been feeling so sick all day, just**  
22 **emotionally and mentally off, that I picked my son**  
23 **up from school and then I decided we would go have**  
24 **dinner, have an early dinner.**

25 **We went out to eat around 3:30. And we**

1 came home and watched a movie. And I put him to  
2 bed pretty early, around 8:30, 9:00 o'clock.

3 Q. And was your son -- did he know that  
4 James was supposed to come home that night?

5 A. Yeah. And the kids were really excited  
6 to see him. But my son was especially excited to  
7 see him because James was so involved and he never  
8 really went anywhere. When James and I went to the  
9 Harmonic Wealth weekend, that was the first time we  
10 ever left the children ever.

11 And my son was so excited to see him that  
12 he was running around the house when we got home,  
13 saying, mama, daddy's coming home. Daddy's coming  
14 home. He said, I want you to wake me up when he's  
15 here.

16 I said, I'm not going to wake you up at  
17 10:00 o'clock. But -- you know -- so he said, can  
18 I sleep in your room?

19 So James and I's bedroom is on the first  
20 floor and the kids' bedrooms are all upstairs. So  
21 I let him sleep downstairs so that he would be able  
22 to hear when James came home around 10:00. I  
23 thought his plane landed at 10:30. Yeah. He was  
24 really excited. They've never been apart from him.

25 Q. An around 10:00, tell the jury what

1 happened.

2 A. So at 10:00 o'clock, right around  
3 10:00 o'clock, at this point I was really a mess.  
4 I didn't know why. I didn't have anything to be a  
5 mess about, but I felt really strange.

6 At 10:00 o'clock there was a knock on my  
7 front door. So then I thought he lost his keys and  
8 his cell phone. I mean, I thought, oh. That's  
9 James. It's 10:00 o'clock. So he lost his whole  
10 wallet in the desert.

11 And I went and answered the door, and it  
12 was his brother. And I knew when I saw his brother  
13 standing there that something really weird had  
14 happened. Because his brother, even though his  
15 brother lived in Chicago, would never come over at  
16 10:00 o'clock at night unannounced. So Chris Shore  
17 is the one that told me what had happened.

18 Q. And Chris lives where?

19 A. In Chicago.

20 Q. And that night did he drive from Chicago  
21 to Milwaukee?

22 A. Yes. Detective Diskin called him after  
23 James was checked into the hospital.

24 Q. Just tell the jury then what happened.

25 What did Chris say?

1 A. Okay. Chris said -- I said -- well, I  
2 answered the door. And I was really shaken up.  
3 And I said, what are you doing, Chris? And I said,  
4 I'm sorry I'm so jumpy, but James is out of town,  
5 and I don't know where he is, and I don't know  
6 what's going on.

7 He said, yeah. I know. That's why I'm  
8 here. There was an incident, and James died in a  
9 sweat lodge.

10 And Chris is a marine. He's a captain --  
11 do you know? Is it in the notes? I'm sorry, but I  
12 don't have all this in my head. This is so hard.  
13 I can't believe that I'm having this -- I'm going  
14 to walk of here -- I believe he's a captain. And  
15 he's very easy at telling people and family members  
16 that people have passed away. So Chris told me.  
17 Probably it was the best person that could have  
18 told me.

19 Q. Did your family, then, gather at your  
20 house?

21 A. Yeah. So then we called James's mom and  
22 his stepdad, Tom and my brother and his wife and my  
23 sister, some friends. Within an hour there was  
24 probably about 10 or 12 people in the living room.

25 My son was sleeping in the bedroom so we

1 turned all these fans on because I didn't want him  
2 to wake up in the middle of all of it. I wanted --  
3 I just kept thinking, as long as he sleeps and gets  
4 one night of sleep before he finds out. So we had  
5 run all these fans while everybody was in the  
6 living room.

7 Q. And did family stay with you that night?

8 A. Yes.

9 Q. And tell the jury -- this is Darshan?

10 A. Yes.

11 Q. And this is Exhibit 1101.

12 Can you tell the jury what his name --  
13 where you got his name from?

14 A. Darshan?

15 Q. Yes.

16 A. I had a dream that that was his name.

17 Q. And does it mean something in another  
18 language?

19 A. It means to see the light of God.

20 Q. He at the time was?

21 A. Seven.

22 Q. Seven. And did he wake up that night?

23 A. He did wake up, but he -- just for a  
24 second. And then I told him to go back to bed, and  
25 he did. And then he woke up around 7:00 in the

1 morning.

2 Q. And tell the jury what happened when  
3 Darshan woke up?

4 A. Well, when he woke up, I was in the  
5 bedroom sitting next to him. Of course, I didn't  
6 sleep all night. And he woke up and said, where's  
7 daddy? And then he looked at me and he just  
8 started screaming.

9 He just started screaming. He could see.  
10 I mean -- you know -- he could see in my face that  
11 I'd been sitting there crying allnight. And he  
12 just started screaming. And the wailing and the  
13 sounds -- I will never get that out of my mind,  
14 the -- the sounds that can come out of a very small  
15 child.

16 And I didn't want to tell him until I  
17 told his sisters. But I didn't really have a  
18 choice because he knew. And then he jumped up and  
19 started running around the house screaming, the  
20 plane crashed. The plane crashed. And I didn't  
21 tell him what happened. I think he thought for a  
22 couple days that he died in a plane crash.

23 Q. And what -- what did you do for Darshan  
24 that day?

25 A. Well, then it was probably about 6:00,

1 7:00 o'clock in the morning. I called -- my girls  
2 were at separate friend's houses, but the houses  
3 were very close together. So I called my friend  
4 and asked her to bring my daughter home and then if  
5 she could go pick up my other daughter.

6 And she said, what's going on? Why do we  
7 have to bring your kids home at 7:00 o'clock in the  
8 morning?

9 And I said, I don't want to tell you what  
10 hap -- what's going on. I just need them home. So  
11 I don't want you to drive across town crying with  
12 my kids in the car and my kids asking you what  
13 happened. I want to be able to tell them.

14 And so she brought them home. And then I  
15 sat the girls down on the couch, and I asked  
16 everybody to leave so that I could have the house  
17 to myself with the kids. And I made them some tea,  
18 and I sat them down and -- there's no way to tell  
19 your kids that their dad is dead. There's no way  
20 to do it other than to just do it. I just had to  
21 do it. I just had to say, your dad's dead. And  
22 I -- and they started screaming.

23 And my oldest daughter -- you know -- she  
24 said, that only happens in movies and books that  
25 dad reads me. That stuff doesn't really happen,

1 mom -- you know. And she kept repeating that over  
2 and over. And then we snapped into function mode.

3 You know -- that's the thing about death  
4 is that you only really have a little window and  
5 then as a mom of children you have to snap into  
6 function mode -- you know. And where is his body  
7 and the memorial service. There's all these people  
8 coming, and the kids are hungry, and you still need  
9 laundry. And all that stuff.

10 Q. I want you to talk just a little bit  
11 about each of the children, the impact on them and  
12 how they're doing today, how they've dealt with it.

13 A. Uh-huh.

14 Q. And if I could ask you first about your  
15 oldest. And that's Inaya?

16 A. Uh-huh.

17 Q. And I'm just going to put up -- this is  
18 Exhibit 1117. Is that Inaya?

19 A. That's Inaya. Uh-huh.

20 Q. And today's she is how old?

21 A. 13.

22 Q. She was 11 at the time?

23 A. Right.

24 Q. And tell the jury how she dealt with it  
25 learning that her dad died and how the next few

1 days were for her?

2 A. Well, Inaya -- I wouldn't say this in  
3 front of my children. But Inaya was probably the  
4 closest to James. I don't know if it was because  
5 she was the first born and she was daddy's little  
6 girl and they -- I mean, they read so much  
7 together, and she was more interested in what --  
8 the books they read than the other two. She spent  
9 a lot of time with him. She was very, very close  
10 to James.

11 And Inaya slipped into -- I don't know if  
12 it was post-traumatic stress syndrome, anxiety,  
13 depression disorder -- like I've never seen. I  
14 mean, I was talking to therapists and counselors,  
15 and I was reading every book I could get my hands  
16 on about how to deal with children and death and  
17 crisis.

18 And James and I raised our children in a  
19 very open, loving family. And we always made sure  
20 that they felt like they could share and express  
21 their emotions. I don't know if part of it was  
22 because they were used to really emoting and really  
23 being able to express and being able to talk about  
24 their emotions. But she freaked out.

25 I mean, I don't really know what else to

1 say about it other than after the people left and  
2 the services were over, probably about a month, six  
3 weeks after, she started having extreme, extreme  
4 anxiety. And she would wake up -- well, if she  
5 went to bed, she wouldn't go to sleep. And if she  
6 did, if I did get her to go to sleep, she would  
7 wake up in fits and terror, and she would start  
8 wandering around the house screaming James's name  
9 and where's dad?

10 And I would wake her up and I would stand  
11 in the hallway and shake her and -- and then she  
12 would get very, very angry at me because she was  
13 sure that I should have died and that James  
14 shouldn't have died or that I shouldn't have let  
15 him go or -- I mean, she just had all of these  
16 ideas and that she wished that she could die and go  
17 with him.

18 So I would -- she would wake up and --  
19 and I would chase her into the kitchen, and she  
20 would grab a knife and -- I mean, three or four  
21 times she asked me to kill her and -- I mean, it  
22 was just on and on. And that went on for about  
23 nine months.

24 She wouldn't go to school. She dropped  
25 out of all of her extracurricular activities and

1 social things and sports.

2 Q. How did you finally get her and the other  
3 kids to go back to school?

4 A. I don't know. It was just really baby  
5 steps, you know. It was really baby steps. In the  
6 beginning I would go with them, and I would do a  
7 little volunteer work in the library or -- they  
8 were very scared. Very scared.

9 Q. Scared of what?

10 A. That something was going to happen to me  
11 if I left them, or if I dropped them off that I  
12 wouldn't come back. Because the last time they saw  
13 their dad they were dropped off at school.

14 Q. How is Inaya doing today?

15 A. Inaya is doing a lot better. She's --  
16 she's doing a lot better. But the interesting  
17 thing about Inaya's situation was so extreme -- it  
18 was so extreme and there was so much anxiety that  
19 my middle daughter, Amrita, couldn't process the  
20 death at all because I was so completely  
21 hyperfocused on Inaya, that my middle daughter,  
22 Amrita, would choose to do the opposite. She would  
23 choose to leave the house. She would go to a  
24 friend's house and then sleep over Friday night and  
25 call on Saturday and say, I want to stay again.

1 I would say, fine. Because my situation  
2 with Inaya was so extreme that I really did have to  
3 focus 100 percent of my time with her.

4 And then right around the time that Inaya  
5 started getting a little better and she started  
6 shifting, Amrita started crashing.

7 Q. And in what way? What do you mean?

8 A. She had a situation at school where her  
9 teacher's daughter got very sick. Her teacher, who  
10 she just absolutely loves and adores and has had --  
11 my children go to the school where they keep the  
12 same teacher for every year. So they've had the  
13 same teacher for first and second grade, third  
14 grade. She was in fourth grade.

15 Her teacher, who she just absolutely is  
16 like a second mother to her, her daughter got very,  
17 very sick. And so the teacher would be at school  
18 and she would have to leave very quickly to go to  
19 the hospital. And then she would be gone for  
20 several weeks. And then she would come back. And  
21 then they would have another emergency. And this  
22 went on for about two months.

23 Something about that event triggered in  
24 my daughter that this could happen again. It  
25 wasn't an isolated incident. It was just that

1 James died, that I could die or her teacher could  
2 die or the teacher's daughter could die.

3 And so she became extremely clingy with  
4 me, and she stopped going to school and -- she  
5 still won't leave me for anything. Coming here for  
6 a day and a half was hard on her.

7 Q. And did she also drop out of activities?

8 A. Yes. Uh-huh. Yeah.

9 Q. And how is she doing now?

10 A. She's in that right now. She's not  
11 recovered yet.

12 Q. Did you get counseling for the kids?

13 A. I did get counseling for the kids,  
14 although children didn't like it. I felt --  
15 looking back at it now, I think it was too soon.  
16 In the beginning they just wanted to be normal, a  
17 little bit normal. They didn't want to just keep  
18 talking about it. And everybody was talking about  
19 it. They wanted -- they didn't want to talk about  
20 it.

21 I think that now they're ready for  
22 counseling. I think in the beginning it was so  
23 extreme and the trauma was so severe that they  
24 weren't ready.

25 Q. Will you talk a little bit about your



1 son, Darshan, and how he dealt with it and how he's  
2 doing today?  
3 **A. Yeah. Darshan -- Darshan being the**  
4 **youngest couldn't really express a whole lot about**  
5 **what he was going through. So he was 7. He --**  
6 **he -- you know -- he kind of went along with the --**  
7 **he just went along with the plan.**

8 **He talks a lot to his friends about how**  
9 **he doesn't have anybody to wrestle with, and I**  
10 **won't wrestle, and I don't play ball, and I don't**  
11 **play catch. And he misses James's physical**  
12 **presence the most because they were very**  
13 **physically -- they just wrestled all the time, and**  
14 **they used to play these games called "dug-dug,"**  
15 **which he just was talking about it the other day in**  
16 **the car, how he wishes I would play dug-dug with**  
17 **him. But -- you know -- it's kind of a**  
18 **hide-and-chase, run-around-the-house game.**

19 **But then what happened was back -- so**  
20 **about a year later, right around the same time that**  
21 **Inaya started to get better, both the younger**  
22 **children started to get worse. And he started**  
23 **getting very, very violent at school and created a**  
24 **little gang, I guess, and was having some -- some**  
25 **borderline major -- could have been major violence**

1 **issues.**

2 **So I talked to the teachers in the**  
3 **school, and we were considering doing counseling.**  
4 **And we all decided collectively that he needed**  
5 **hockey. I told you that. Because he -- that's**  
6 **what he -- the thing that Darshan was missing was**  
7 **guys and sports and running around and being**  
8 **physically active. We put him in hockey. And now**  
9 **he's doing better.**

10 **Q. He's doing better?**

11 **A. Yes.**

12 **Q. How many days a week is he playing**  
13 **hockey?**

14 **A. Four.**

15 **Q. Will your kids ever be the same?**

16 **A. My kids will never be the same.**

17 **Q. And explain that if you would.**

18 **A. Well, I will never forget the day after,**  
19 **the Saturday, that all the kids found out and we**  
20 **just cried all day. And then that night they kind**  
21 **of went to sleep, and I didn't go to sleep.**

22 **I will never forget the next morning when**  
23 **the three of them walked out of my bedroom. They**  
24 **all looked totally different to me. I mean, my**  
25 **son, who was seven, used to look like a seven year**

1 **old. He walked out of that bedroom, and he looked**  
2 **like a little man.**

3 **They all -- they all grew up overnight.**  
4 **They had no longer the childhood fantasy of -- that**  
5 **everything is okay and that -- it's totally crashed**  
6 **for them.**

7 **My 13-year-old daughter -- how much of**  
8 **this -- she can't ever see this recording. She'll**  
9 **get mad at me. Sorry. My 13-year-old daughter is**  
10 **totally obsessed with boys, very prematurely. She**  
11 **really wants a boyfriend really bad. And I know**  
12 **that that's just because she was so close with her**  
13 **dad. She was so close with her dad.**

14 **So, I mean, there's things like that that**  
15 **make me very, very nervous. Makes me very nervous**  
16 **for them as a parent.**

17 **Q. Before James died, were your kids**  
18 **carefree and joyful?**

19 **A. Yes.**

20 **Q. And how are they today?**

21 **A. My kids are pretty intense today. People**  
22 **have to really be careful around my children, what**  
23 **they say, where they take them. I don't leave my**  
24 **middle daughter at all ever except to go to school.**  
25 **Occasionally she'll go to a friend's house. But if**

1 **she does go to the friend's house, my friend's**  
2 **parents -- or my children's friend's parents have**  
3 **to be very, very, very careful around my children.**  
4 **They can't, like, run to the grocery store and come**  
5 **back.**

6 **They're very different. They're very**  
7 **different.**

8 **Q. And Alyssa. You've -- you've had to --**  
9 **you've spoken about what you've done for your**  
10 **children and how you immediately had to snap into**  
11 **mom mode. What about you and your opportunity to**  
12 **grieve?**

13 **A. Yeah. I think that's part of the reason**  
14 **this is so -- and this would be hard no matter**  
15 **what. But part of it is that I really haven't gone**  
16 **through probably a normal grieving process because**  
17 **I was immediately into high functioning with the**  
18 **children. And I've been focused -- totally focused**  
19 **on them, especially because my oldest daughter, the**  
20 **severity of what was going on was so extreme**  
21 **that -- yeah. I think I probably haven't gotten it**  
22 **yet.**

23 **Q. You talked a little bit about your**  
24 **business. Were you primarily a stay-at-home mom?**

25 **A. I was a stay-at-home mom, but I worked**

1 part time.

2 Q. And describe your business for the jury.

3 A. So, like I said, I'm a licensed massage  
4 therapist. But I actually don't do massage  
5 therapy. I do another system of body work that  
6 still falls under that umbrella.

7 But I do a lot of therapy with people,  
8 but I'm not a licensed counselor. I don't talk to  
9 them about things that -- it's just when people  
10 come to see a massage therapist, they talk to you,  
11 same way that somebody would talk to their  
12 hairdresser.

13 Q. And having now experienced your own  
14 grief, is it difficult for you to carry on with  
15 that business?

16 A. Right. Well, I, essentially, lost my  
17 clientele because I didn't work for the first --  
18 probably about the first six weeks. And then when  
19 I did feel like I was ready to go back to work, my  
20 clients were very nervous to come see me because  
21 all my clients were friends of mine. And most of  
22 my clients came to James's memorial.

23 And then some of them would come back to  
24 see me. But while I was sitting there, then they  
25 would start saying, oh, yeah. I got this problem

1 at work. And then they would look up and say,  
2 well, I shouldn't be talking to you about that.

3 You know. So it just wasn't a very  
4 balanced relationship because they didn't feel like  
5 they -- that I was the same therapist, in their  
6 mind. And I also didn't -- don't have the same  
7 compassion and empathy that I did. I really -- I  
8 don't. I don't know if I'll ever do therapy again.  
9 I mean, I felt like it would be much more fun to do  
10 something that was -- that I didn't have to think  
11 about or be compassionately involved with people.

12 Q. Did you and James have a fairly  
13 traditional split of duties in terms of he worked  
14 and you primarily were a stay-at-home mom?

15 A. Right.

16 Q. Was it difficult for you, then, to pick  
17 up the pieces and assume some things that James  
18 used to do to run the household?

19 A. Right.

20 Q. Such as paying bills?

21 A. Yes.

22 Q. Could you explain that to the jury.

23 A. James and I had what I call a  
24 dysfunctional/functional division of labor. In  
25 some ways it was very traditional and in some ways

1 it grew as we grew because we met when we were so  
2 young and we had children very young.

3 And because we had three children in six  
4 years, there was a lot of things that I just didn't  
5 take responsibility for in the household. James  
6 paid all the bills. He took care of the cars, the  
7 car payments, the cell phones, the computers. And  
8 I didn't really ask.

9 You know -- I mean, some of this is  
10 pretty embarrassing for me to talk about. But when  
11 he died, I didn't know if I owned my car or if we  
12 made car payments. I didn't know who my cell phone  
13 provider was. I knew I had a cell phone, but I  
14 didn't know the difference between T-Mobile and  
15 Verizon and U.S. Cellular.

16 He also was -- because he was a computer  
17 genius, everything that he did was online. And  
18 because James was so interested in computers, I  
19 never went through that natural learning curve that  
20 most people my age go through between 20 and 30  
21 when they -- computers -- everybody was on a  
22 computer.

23 I never went through that because James  
24 was there with a computer. And I would say, check  
25 my email. Or he would say, you have an email.

1 This is what it says. I just never sat down. I  
2 was always running around cooking or cleaning or  
3 doing laundry or playing with the kids.

4 So everything that he did was online.  
5 There was no paper trail. So within the first  
6 month, I mean, we were scrambling to figure out how  
7 to make sure my electric didn't get turned off, how  
8 to make sure my cell phone didn't get turned off,  
9 whether or not I had car payments, car insurance.  
10 It took me a really, really long time to rewrite  
11 how to run a household without him.

12 Q. Did you even know passwords for accounts?

13 A. No.

14 Q. How did you go about figuring them out?

15 A. Some of them we would beg the company.  
16 You know? I mean, we would call the company and  
17 explain the situation and beg them. I knew all his  
18 security questions. You know what I mean? If they  
19 said, who is his favorite childhood superhero, I  
20 knew that stuff. So they would usually give me  
21 those. But --

22 Q. Your children -- you mentioned it's a  
23 two-story house and their bedrooms are upstairs?

24 A. They were upstairs.

25 Q. And tell the jury about that.

1 **A. My children refuse to go upstairs because**  
 2 **they think it's too far away from -- we have a real**  
 3 **traditional Midwest -- if anybody is from the**  
 4 **Midwest. These tall houses with first floor --**  
 5 **living room, kitchen, bedroom, bathroom. And then**  
 6 **you go up the stairs, and there's bedrooms**  
 7 **upstairs.**

8 **The upstairs feels very, very, very far**  
 9 **away from them. So I moved my daughter -- my**  
 10 **oldest daughter, Inaya, when she was having such a**  
 11 **hard time, I moved her bedroom across the hall from**  
 12 **mine into what was James's office. My other two**  
 13 **children sleep in my room.**

14 **Q. When you first took the stand, Alyssa,**  
 15 **you mentioned that James was your best friend?**

16 **A. Uh-huh.**

17 **Q. How has it been for you personally to**  
 18 **have lost him?**

19 **A. It's hard when you're going through**  
 20 **something like this to not have your best friend to**  
 21 **talk to about it. I mean, James and I, like I**  
 22 **said, had somewhat of a functional/dysfunctional**  
 23 **codependent relationship. I mean, I have a lot of**  
 24 **friends. I have a lot of support. But he was my**  
 25 **go-to for everything. And that's who I talked to.**

1 **So it's been very hard.**

2 **Q. How have holidays -- Christmas of 2009.**  
 3 **How did you get through that?**

4 **A. My sister came and helped me. James**  
 5 **always did a really big Santa Claus thing -- or**  
 6 **we -- together we did it. So the kids would go to**  
 7 **bed. And then we would wrap all the presents and**  
 8 **spread them out and have Santa -- say that Santa**  
 9 **came. And -- so my sister came and helped me pull**  
 10 **that off.**

11 **But my son asked Santa to bring his dad**  
 12 **back. So he said, this is the year we will find**  
 13 **out whether or not Santa is real. So they all**  
 14 **decided they were going to find out whether or not**  
 15 **Santa was real. So they asked for Santa to bring**  
 16 **James back. And now they don't believe in Santa.**

17 **Q. None of the kids believe in Santa**  
 18 **anymore?**

19 **A. No. No.**

20 **Q. Do your children -- I'm going to ask you**  
 21 **a couple questions about James's mother, Jane**  
 22 **Shore-Griff, who was here for part of the trial.**  
 23 **You have a close relationship with her?**

24 **A. Yes.**

25 **Q. And tell the jury, then, how the two of**

1 **you have tried to help each other get through this.**

2 **A. Well, we have been -- we've been very**  
 3 **supportive of each other. It's been very, very**  
 4 **hard on Jane because it is her second son that's**  
 5 **passed away. And she's had a very hard time**  
 6 **emotionally. She's really struggling.**

7 **So we have been supporting each other**  
 8 **emotionally. And she gets a lot of enjoyment from**  
 9 **spending time with the kids and -- so we try to do**  
 10 **a lot together.**

11 **Q. Does she take an active part in the kids'**  
 12 **lives?**

13 **A. Yes.**

14 **Q. Did she before?**

15 **A. Yes.**

16 **Q. And she continues to?**

17 **A. Yes.**

18 **Q. And does she pick the children up from**  
 19 **school?**

20 **A. Yes. Except that my kids have a very**  
 21 **hard time doing anything without me. So we often**  
 22 **do things together with the children. She'll come**  
 23 **to one the kid's plays or sporting events or -- but**  
 24 **she had been picking up my daughter, taking her to**  
 25 **exercises on Monday, trying to help out with things**

1 **like that.**

2 **Q. Is there still a voice message from or to**  
 3 **from James on Jane's voice message machine?**

4 **A. I believe so.**

5 **Q. Do you spend holidays with Jane and her**  
 6 **husband and other family members?**

7 **A. Yeah. We split them usually between**  
 8 **James's family and my family. My family is in**  
 9 **Chicago.**

10 **Q. And is Jane there now for the children's**  
 11 **birthdays --**

12 **A. Yes.**

13 **Q. -- and other activities?**

14 **A. Yes.**

15 **Q. How have -- how has Chris, James's**  
 16 **brother -- what's your observation about how Chris**  
 17 **has been able to deal with this?**

18 **A. I think that everybody is having a very**  
 19 **hard time. But I'm not very close to Chris. I**  
 20 **don't see Chris very often. So it's a little bit**  
 21 **hard for me to talk about.**

22 **Q. And how about Ginny, his sister?**

23 **A. I know Virginia has been having a really**  
 24 **hard time.**

25 **Q. Where does Ginny live?**

1 **A. In Washington, D.C.**

2 **Q.** Did James have a lot of friends in the  
3 community?

4 **A. Yes.**

5 **Q.** And for you, when you take your  
6 children -- you're out in the community, does that  
7 also present opportunities for grief for you?

8 **A. Yes. Yes.**

9 **Q.** Have you withdrawn from some of your  
10 activities?

11 **A. Yes.**

12 **Q.** Such as what?

13 **A. Everything that I did.**

14 **Q.** And how come?

15 **A. I don't do anything because I -- the**  
16 **kids -- the kids have needed me to be with them.**  
17 **They don't -- they're not comfortable. They're**  
18 **going to school, but they're not comfortable**  
19 **with -- I mean, I couldn't have a baby-sitter at**  
20 **night or something like that.**

21 **So -- and while they're at school, I have**  
22 **been -- I just run the household, whether it's the**  
23 **cooking and the cleaning or figuring out all of**  
24 **James's systems.**

25 **Q.** Will you tell the jury about the services

1 that you had for James and the school had.

2 **A. Right after James passed away, the**  
3 **school -- my children's school had a memorial**  
4 **service three days after he passed away that we did**  
5 **not attend. It was too soon for me to go out of**  
6 **the house. I believe about 250 people attended**  
7 **that.**

8 **James and I have been very, very involved**  
9 **in my children's school. From -- everything from**  
10 **driving on all the field trips. James was always**  
11 **there. And I sat on the school board. And he came**  
12 **to all the festivals and the functions and did a**  
13 **lot of volunteer work with the school. So the**  
14 **school community is -- was very effective. So that**  
15 **was a first memorial.**

16 **We had a larger memorial, I think, about**  
17 **ten days later, a week later. And about 350 people**  
18 **came to that.**

19 **Q.** And was there also a memorial back in  
20 Albuquerque?

21 **A. Yes. Uh-huh. There was another --**  
22 **because we lived in Albuquerque for so long, there**  
23 **were quite a few people in Albuquerque who couldn't**  
24 **come to the service. And so there was the another**  
25 **memorial service in Albuquerque.**

1 **Q.** And, Alyssa, I apologize for this  
2 question. But it was -- was it difficult for you  
3 to learn that your husband passed away,  
4 essentially, as a John Doe, unidentified?

5 **A. Yes. My understanding is that he filled**  
6 **out emergency contact information with my name on**  
7 **it but that the emergency contact forms were taken**  
8 **right away off of Angel Valley property.**

9 **Q.** Although you don't really know that?

10 **A. I don't know that. What I do know is**  
11 **that Detective Diskin went into James Shore's**  
12 **room --**

13 **Q.** And let me just stop you --

14 **A. Okay.**

15 **Q.** -- because you can only talk about what  
16 you personally know.

17 **A. Okay. Okay.**

18 **Q.** And -- and my question was just limited  
19 to --

20 **A. Yeah.**

21 **Q.** -- it's difficult to learn that your  
22 husband passed away, essentially, unidentified?

23 **A. Yes.**

24 **Q.** You were able to follow parts of the  
25 trial --

1 **A. Uh-huh.**

2 **Q.** -- were you not?

3 And during the course of the trial, you  
4 learned about your husband's actions in saving  
5 Sidney Spencer?

6 **A. Uh-huh.**

7 **Q.** Did that surprise you, Alyssa, to learn  
8 that your husband had done that?

9 **A. It did not surprise me because -- I mean,**  
10 **James really lived like a hero. He really did. It**  
11 **didn't surprise me at all. I mean, he was my hero**  
12 **every day. And, of course, it -- I was -- you**  
13 **know -- made me feel like he died being and living**  
14 **and continuing to be the man that he was.**

15 **I shared it with the children. I don't**  
16 **know. Everybody was -- I don't know. I thought**  
17 **they would be proud of him or know that he died**  
18 **helping somebody. And they got really mad. They**  
19 **were very angry, my oldest daughter especially.**  
20 **Because she said -- you know -- why would he do**  
21 **that? Why wouldn't he save himself? Doesn't he**  
22 **care about us? Doesn't he love us? Why wouldn't**  
23 **he come back to us? Why did he -- why did he have**  
24 **to do that? Why did he have to go back in?**

25 **So it was interesting. Their reaction**

1 **was very angry about it actually. It's**  
2 **interesting. But I wasn't surprised by that.**

3 MS. POLK: Thank you, Alyssa.

4 Thank you, Your Honor.

5 THE COURT: Thank you, Counsel.

6 Mr. Kelly.

7 MR. KELLY: No questions. Thank you.

8 THE COURT: Ladies and gentlemen, any  
9 questions for this witness?

10 Thank you, then, Ms. Gillespie. You may  
11 step down.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Ms. Polk.

14 MS. POLK: Your Honor, the state has no  
15 further witnesses.

16 THE COURT: I think it would be appropriate to  
17 take the evening recess at this time.

18 Counsel, could you approach the bench to  
19 discuss scheduling here.

20 (Sidebar conference.)

21 THE COURT: Mr. Kelly, what were you going to  
22 say?

23 MR. KELLY: I'd ask after the jury is excused  
24 for about five minutes of your time on the record  
25 today.

1 THE COURT: Okay. You wanted to get set up.  
2 I don't see any sense for a few minutes.

3 Ms. Polk.

4 MS. POLK: I agree. I think we should recess  
5 for the day.

6 THE COURT: Just remind the admonition.

7 All -- everybody needs to come back. The  
8 alternates need to come back. I don't know if  
9 Mr. Kelly anticipates witnesses or not.

10 MR. KELLY: No witnesses.

11 THE COURT: Okay. We'll go ahead with the  
12 recess. I'll stay here on the bench.

13 (End of sidebar conference.)

14 THE COURT: Ladies and gentlemen, we will take  
15 the evening recess at this time. Again, remember  
16 all aspects of the admonition. It's just like the  
17 beginning of the trial. All of you, including the  
18 two alternates, need to return tomorrow.

19 And please be assembled at the normal  
20 time, 9:15. We'll get started just as soon as we  
21 can after that time. So, again, remember the  
22 admonition.

23 I'll ask the parties to remain a moment.

24 Thank you.

25 (Proceedings continued outside presence

1 of jury.)

2 THE COURT: The record will show that the jury  
3 has left the courtroom. Mr. Ray and the attorneys  
4 are present.

5 Mr. Kelly.

6 MR. KELLY: Judge, I would remove -- I'd move  
7 for a Rule 20 on the aggravators, which I'm going  
8 to identify as No. 1 and No. 3. No. 1 is the  
9 pecuniary gain, and No. 3, that my client was in a  
10 unique position of trust with each victim.

11 We've now heard from three victims,  
12 Judge, who have testified extensively as to the  
13 second aggravator. And that is the extent of the  
14 emotional harm they suffered.

15 But as to the other two alleged  
16 aggravators, this afternoon's evidence has provided  
17 no additional factual basis to support those two  
18 requested aggravating circumstances.

19 I would simply incorporate Ms. Seifter's  
20 prehearing argument. And as well, Judge, I would  
21 emphasize that there has -- as it relates to  
22 pecuniary gain, there has been no evidence, no  
23 evidence, that my client, James Ray, has received  
24 anything of value as a result of attending the  
25 Spiritual Warrior 2009 seminar.

1 We have heard throughout the course of  
2 four and a half months that people paid monies of  
3 various amounts into a corporation known as JRI. I  
4 believe we have into evidence an exhibit showing  
5 that Mr. Ray is the president of that corporation.  
6 That's the sum total of the evidence.

7 And we have not heard any evidence that  
8 Mr. Ray, the individual, has received a dime as a  
9 result of the activities in 2009, nor have we heard  
10 any evidence that he had an expectation for receipt  
11 of value.

12 And, Judge, I -- I would point out the  
13 obvious, that many corporations run at a loss. We  
14 have no idea. It's pure speculation now to somehow  
15 connect checks that were written to JRI to  
16 Mr. Ray's financial benefit as a result of  
17 conducting the seminar.

18 So, again, Judge, the Rule 20 standard  
19 has been articulated by a -- a motion at the close  
20 of the guilt phase. The standards were set forth  
21 by Ms. Seifter in her motion, argued by Mr. Li  
22 orally. I believe those are the correct standards.

23 Stated simply, there has to be  
24 substantial evidence that a jury could find beyond  
25 a reasonable doubt that Mr. Ray was -- committed

1 this offense as consideration for the receipt or  
2 expectation of the receipt of anything of value.  
3 And there's simply no evidence.

4 So I'd ask that the Court at this point  
5 in time enter a directed verdict on that particular  
6 special circumstance.

7 In regards to the third circumstance,  
8 the -- my client was in a unique position of trust  
9 with each victim, Judge, again, I would incorporate  
10 Ms. Seifter's objection, which she argued prior to  
11 this hearing. And in addition, Judge, emphasize  
12 that the unique position of trust identified with  
13 this aggravating circumstance are situations, such  
14 as the parent-child relationship or a fiduciary  
15 relationship or a relationship with someone who  
16 perhaps is somewhat vulnerable, whether it be  
17 mentally or physically.

18 And in this particular afternoon we heard  
19 quite the opposite. We heard that the victims in  
20 this case were extreme adventurers, that they were  
21 people who were very accomplished, intelligent,  
22 capable of making their own decisions.

23 And incorporating Ms. Seifter's argument,  
24 I would submit that that does not comply with the  
25 legal standard in substantial evidence such that a

1 reasonable jury could find that my client was in a  
2 unique position of trust given that additional  
3 evidence.

4 Of course, again I'd emphasize, Judge, I  
5 believe Ms. Seifter was correct in -- in her  
6 argument as to why this jury should not be provided  
7 with that special circumstance.

8 Finally, Judge, of course, again I would  
9 re-emphasize that it violates the Sixth Amendment,  
10 the right of confrontation, and those arguments  
11 argued by Ms. Seifter.

12 THE COURT: Ms. Polk.

13 MS. POLK: Your Honor, first of all, with  
14 respect to the aggravating circumstance of -- in  
15 anticipation of an expectation of or receipt of  
16 pecuniary gain, there has been ample testimony  
17 throughout the trial, both direct and  
18 circumstantial.

19 The jury knows and has seen the evidence  
20 that was admitted pertaining to the corporate  
21 officers. They know that Mr. Ray is not just the  
22 president, but he holds every corporate position  
23 and, essentially, that he is James Ray  
24 International.

25 There was testimony from Melinda Martin

1 at trial that this was Mr. Ray's event and that he  
2 was the one who controlled every aspect of it.  
3 There was testimony from Melinda Martin, as well as  
4 other witnesses at the trial, and in addition from  
5 Ms. Gillespie, that at every event it is Mr. Ray  
6 himself who is during -- at various opportunities,  
7 he is the one who is selling events and encouraging  
8 participants to --

9 (Pause in proceedings.)

10 MS. POLK: There has been ample, both direct  
11 and circumstantial, evidence that the event cost  
12 \$10,000 and that it is Mr. Ray, as the sole officer  
13 of JRI, who is the recipient of that money.

14 Secondly, the jury heard through the  
15 audiotapes Mr. Ray's own words as he urged  
16 participants to play full on. In several audio  
17 clips that I'll be playing for the jury in closing,  
18 Mr. Ray reminds them they have paid \$10,000 for the  
19 event and that they need to play full on in order  
20 to get the full value of their investment, and how  
21 he repeatedly throughout the week talks to them  
22 about breakthroughs and that this -- the entire  
23 week is about having that breakthrough and having  
24 that altered mental state, and that is what they  
25 paid their money for.

1 So, Your Honor, there is both direct  
2 evidence, which is the fact that all the  
3 participants paid \$10,000, as well as  
4 circumstantial evidence that that money went to JRI  
5 and it is Mr. Ray who is the sole and only officer  
6 in each position of that corporation.

7 With respect to the position of trust,  
8 the fact that two of the participants had -- or  
9 actually all three have been described as safety  
10 conscious and as adventurers and as determined, the  
11 other attributes that have been used to describe  
12 the three victims, that is actually more compelling  
13 testimony of the position of trust.

14 The inference from that testimony is that  
15 these people, who are safety conscious, who are  
16 determined, who are not easily suggestible, that  
17 they found themselves in a situation where their  
18 teacher persuades them to undertake an activity  
19 that would normally be contrary to how they would  
20 react and to -- persuades them to set aside their  
21 own instincts and their own common sense and follow  
22 him into an event that ends up in their death.

23 That is more compelling testimony that  
24 there is this trust relationship there that many  
25 other participants testified about, how they all

1 trusted Mr. Ray and trusted that he would keep them  
2 safe.

3           So, again, through both direct and  
4 circumstantial evidence is the inference that  
5 Mr. Ray was in a unique position of trust and  
6 because of that position of trust, the three  
7 victims followed him into a sweat lodge, setting  
8 aside their own instincts of self-preservation,  
9 believing him that if they pushed through the heat,  
10 then something good at the other end would wait for  
11 them.

12           And, Your Honor, on both of those  
13 aggravating circumstances, there has been  
14 sufficient direct as well as circumstantial  
15 evidence to have the issue go to the jury.

16       THE COURT: Mr. Kelly.

17       MR. KELLY: Judge, again, I would incorporate  
18 the written pleadings addressing these two issues,  
19 but simply emphasize that holding a corporate event  
20 upon which people pay money to a corporation cannot  
21 be the nexus of -- of the crime sufficient to  
22 establish this pecuniary-gain sentence-enhancement  
23 provision.

24           If that's the case, Judge, what we've  
25 done is, essentially, destroy all concept of

1 distinguishing between corporate liability and  
2 individual liability. It could be, then, based on  
3 that, any corporate activity could become a  
4 sufficient basis to allege an aggravator. And  
5 that's simply not the law.

6           And, again, there has to be substantial  
7 evidence. Evidence is not simply unsupported  
8 conclusions argued by the state. Evidence is  
9 testimony or exhibits showing that Mr. Ray, the  
10 individual, either received or had an expectation  
11 of a receipt of anything of value.

12           And -- you know -- I find it surprising  
13 that we're instructing the jury on the first page  
14 of your instructions, you should not guess about  
15 any fact, and now collectively we're guessing that  
16 Mr. Ray received something of value. And -- and  
17 that is not substantial evidence, Judge. And I  
18 would submit that a directed verdict has to be  
19 entered in that regard.

20           Again, the catch-all factor under the law  
21 as briefed -- you know -- it has to be a unique  
22 position of trust. Otherwise the same thing is  
23 going to happen. We're going to have an  
24 aggravating circumstance which would be inherently  
25 incorporated into each and every crime under

1 Arizona law upon which there's a victim. It has to  
2 be a unique position of trust, not simply a  
3 position of trust.

4           And I didn't hear anything additional  
5 today that would indicate that there was some  
6 particular relationship between the victims and  
7 Mr. Ray, the individual, that would fall under the  
8 umbrella of this particular catch-all factor.

9           Finally, Judge, in regards to the  
10 pecuniary gain -- gain, there's been no evidence,  
11 actually no connection, between the payments to JRI  
12 and the conduct of the sweat lodge. I realize --  
13 I've heard the argument of the State of Arizona.  
14 But -- but there's been no evidence of that.  
15 There's been no testimony that people paid money  
16 because they believed that the bulk of their money  
17 or any portion of their money was going to go to  
18 the final exercise, the sweat lodge.

19           In fact, what -- what severs that nexus  
20 is the free-will aspect that people were warned or  
21 advised that they don't have to participate in any  
22 of these activities. And we heard testimony that  
23 many people did not. That's a highly tenuous  
24 connection between pecuniary gain for a  
25 corporation, upon which the participants can

1 exercise free will, choose not to participate, and  
2 then finally somehow imputed to the individual,  
3 James Ray.

4           I would submit, Judge -- or I'd ask at  
5 this point that the Rule 20 be granted on what I've  
6 identified as aggravating factors No. 1 and 3.

7       MS. POLK: Your Honor, if I may, I'd like to  
8 add another argument.

9           On the pecuniary gain, the jury knows  
10 that Mr. Ray made his living by getting people to  
11 come to his seminars. They've heard ample  
12 testimony from many witnesses how one event, a free  
13 event, then leads to these paid events. And that's  
14 something of value that Mr. Ray anticipated --  
15 expected from this seminar is attendance at future  
16 seminars. That would be another argument with  
17 respect to the something of value.

18           The issue of pecuniary gain is that  
19 that -- that's his expectation, that people get  
20 something out of this seminar and then they come  
21 back for yet another seminar or future seminars.

22       THE COURT: Mr. Kelly, you want to address  
23 that point?

24       MR. KELLY: Judge, it's this just this leap of  
25 faith. I -- I think about my own LLCs and

1 corporations. And I hope the activities of my  
2 cattle company are not being held against me today  
3 as I sit here without government being able to  
4 establish through actual testimony and evidence a  
5 nexus between my conduct and the conduct of the  
6 corporation. We argued this extensively during the  
7 guilt phase. And I believe it's one of the  
8 inherent problems in this case.

9 But now clearly in regards to this  
10 alleged aggravating factor, there's been no  
11 evidence connecting the actions of Mr. Ray with the  
12 receipt or the expectation of gain. This idea that  
13 somehow there's a marketing aspect to it that on  
14 prior occasions he offered packages still doesn't  
15 complete the connection between the corporate  
16 entity and the individual.

17 If -- if the corporation were on trial,  
18 this would not be an argument. And we argued it  
19 extensively in terms of the vicarious liability  
20 instruction we requested. And there's simply no  
21 evidence that Mr. Ray benefitted or expected to  
22 benefit from Spiritual Warrior. It's a guess.  
23 It's an assumption. It's a rumor. It's innuendo.  
24 There's no factual basis.

25 And I think Mr. Li and Ms. Seifter --

1 they've argued this actus reus between the sweat  
2 lodge and the pecuniary gain, and we've argued that  
3 repeatedly. And I'd incorporate all those  
4 arguments.

5 It's -- it's simply not what this  
6 aggravating circumstance contemplates under Arizona  
7 law. And I believe Ms. Seifter attempted to  
8 distinguish today the robbery circumstance where  
9 someone goes into the Circle K with the  
10 anticipation that they're going to rob a liquor  
11 store and negligently causes someone's death.

12 That's what the aggravating circumstance  
13 is designed to encompass, for purposes of  
14 sentencing, not something like this where we have a  
15 sweat lodge and no expectation of value at all in  
16 regards to our client's conduct and the act which  
17 causes -- negligently caused the death of these  
18 people.

19 MS. POLK: Your Honor, this is -- we are,  
20 essentially, repeating the arguments that we made  
21 this morning. But I would remind the Court that  
22 the State versus Armstrong case specifically says  
23 that if there's a reasonable inference to be drawn  
24 from the facts, that that should go to the jury on  
25 this issue of pecuniary gain.

1 And clearly, there is a reasonable  
2 inference from all of the testimony and evidence in  
3 this case that Mr. Ray's impetus for doing this  
4 extreme event is to make participants believe that  
5 they received something of value for their money.  
6 And that is an argument that should go to the jury,  
7 that it is their province to determine whether or  
8 not Mr. Ray was motivated by pecuniary gain in  
9 causing this conduct.

10 MR. KELLY: Judge, I'll just reply briefly.  
11 That would gut Rule 20. We're -- we're at the  
12 portion now that perhaps this Court decided that --  
13 that as an initial matter the jury should be  
14 instructed, and we'd wait to see what the evidence  
15 is. Now we know what the evidence is. And Rule 20  
16 does apply to this stage of proceedings. And there  
17 has not been substantial evidence.

18 THE COURT: All right. I observed this  
19 morning there are, in my view, some real legal  
20 issues regarding these two alleged aggravating  
21 circumstances. So I acknowledge those  
22 observations.

23 Looking at the overall theories involved  
24 in the case, I find substantial evidence that  
25 acknowledge those underlying legal issues. So the

1 Rule 20 is denied.

2 And we will resume tomorrow at 9:15.  
3 Thank you.  
4 (The proceedings concluded.)



1 STATE OF ARIZONA       )  
2 COUNTY OF YAVAPAI    ) ss REPORTER'S CERTIFICATE  
3

4           I, Mina G. Hunt, do hereby certify that I  
5 am a Certified Reporter within the State of Arizona  
6 and Certified Shorthand Reporter in California

7           I further certify that these proceedings  
8 were taken in shorthand by me at the time and place  
9 herein set forth, and were thereafter reduced to  
10 typewritten form, and that the foregoing  
11 constitutes a true and correct transcript.

12           I further certify that I am not related  
13 to, employed by, nor of counsel for any of the  
14 parties or attorneys herein, nor otherwise  
15 interested in the result of the within action

16           In witness whereof, I have affixed my  
17 signature this 28th day of July, 2011.

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MINA G. HUNT, AZ CR No 50619  
CA CSR No 8335

24

25

1 STATE OF ARIZONA )  
2 ) ss: REPORTER'S CERTIFICATE  
3 COUNTY OF YAVAPAI )

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24 MINA G. HUNT, AZ CR No. 50619  
25 CA CSR No. 8335